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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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In Hybrid sittings, [V] after a Member's name indicates that they contributed by video call.

The following abbreviations are used to show a Member's party affiliation:

Abbreviation	Party/Group
CB	Cross Bench
Con	Conservative
DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind LD	Independent Liberal Democrat
Ind SD	Independent Social Democrat
Ind UU	Independent Ulster Unionist
Lab	Labour
Lab Co-op	Labour and Co-operative Party
LD	Liberal Democrat
LD Ind	Liberal Democrat Independent
Non-afl	Non-affiliated
PC	Plaid Cymru
UKIP	UK Independence Party
UUP	Ulster Unionist Party

No party affiliation is given for Members serving the House in a formal capacity, the Lords spiritual, Members on leave of absence or Members who are otherwise disqualified from sitting in the House.

House of Lords

Monday 22 March 2021

The House met in a hybrid proceeding.

1 pm

Prayers—read by the Lord Bishop of Newcastle.

Introduction: Lord Coaker

1.08 pm

Vernon Rodney Coaker, having been created Baron Coaker, of Gedling in the County of Nottinghamshire, was introduced and took the oath, supported by Baroness Morris of Yardley and Lord Kennedy of Southwark, and signed an undertaking to abide by the Code of Conduct.

Arrangement of Business

Announcement

1.12 pm

The Senior Deputy Speaker (Lord McFall of Alcluith): My Lords, the Hybrid Sitting of the House will now begin. Some Members are here in the Chamber, others are participating remotely, but all Members will be treated equally. I ask all Members to respect social distancing. If the capacity of the Chamber is exceeded, I will immediately adjourn the House.

Today marks the fourth anniversary of the death of PC Keith Palmer, who died in the line of duty, protecting those of us who work here in Parliament. He ran towards danger to keep each of us safe, and his sacrifice will never be forgotten. We remember all those who died on Westminster Bridge that day and give thanks for the continued service of all those who work so hard to keep us all safe.

Oral Questions will now commence. Please can those asking supplementary questions keep them no longer than 30 seconds and confined to two points? I ask that Ministers' answers are also brief.

Heat Pumps

Question

1.13 pm

Asked by ***Lord Oates***

To ask Her Majesty's Government what plans they have to work with local authorities to increase the uptake of heat pumps in domestic premises.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, the Government remain committed to the ambition set out in the Prime Minister's 10-point plan to install 600,000 heat pumps every year until 2028 to make the UK's homes warmer and more efficient. We already work closely with local authorities on heat-pump delivery, through schemes such as the local authority delivery scheme. The upcoming heat and buildings strategy will set out further details on how we plan to meet this ambition.

Lord Oates (LD): I thank the Minister for his reply. Does he agree that local authorities are well placed to provide the direct engagement and advice required if consumers are to be persuaded to switch to heat pumps in sufficient numbers to meet the Government's target? Therefore, will the forthcoming heat and buildings strategy introduce properly funded local-area-wide heat and energy efficiency plans to help drive the switch?

Lord Callanan (Con): The noble Lord makes a very good point. I have worked closely with local authorities on many of these schemes. The heat and buildings strategy is a priority, and we are aiming to publish shortly after the conclusion of the local elections in England and, of course, the elections in Scotland and Wales. The strategy will set out the important role of local authorities in supporting heat decarbonisation, including raising awareness of the support available to increase voluntary uptake of low-carbon heating systems.

Baroness Whitaker (Lab) [V]: My Lords, one of the biggest problems in reducing carbon emissions is domestic gas heaters. What are the Government doing about finding a way to enable residents of blocks of flats to exchange their gas heaters for electric ones?

Lord Callanan (Con): The noble Baroness draws attention to an important problem. Of course, given the diversity of heat demand, no one solution can provide the best option for everyone; we suspect that a mix of technologies and customer options will need to be available if we are to be able to decarbonise heat at scale, particularly in blocks of flats.

Lord Mackenzie of Framwellgate (Non-Afl) [V]: My Lords, with large numbers of young people and skilled older workers being thrown out of work as a result of the pandemic, is this not the ideal opportunity for the Government to level up by recruiting, retraining and skilling up a green workforce in places such as the north-east—which the noble Lord knows well—to carry out the required conversion work to heating systems in millions of homes and to ensure that green heating systems are installed in all newbuilds going forward, so that we meet our carbon-reduction targets?

Lord Callanan (Con): It is indeed a good opportunity; I agree with the noble Lord. He will be aware that we recently announced a net-zero building package worth around £3 billion, and the Government are also working closely with industry to ensure that technical education provides new entrants with the skills that will be needed to install these new low-carbon heating systems.

Lord Howell of Guildford (Con) [V]: My Lords, I declare my interest, as in the register. While installing heat pumps in all newbuild homes makes a lot of sense, 23 million existing homes have gas heating that needs to be replaced as well. Estimates for doing this vary between £5,000 and £10,000 per household; I leave noble Lords to do the maths, but clearly we are talking about astronomic sums of money, even if it is spread out over the years ahead. Is this really the right resource priority in checking the fast rise in global emissions that is about to be resumed, thanks largely to Asian coal burning, when emissions should actually

[Lord Howell of Guildford]
be falling and not rising at all? Should we not now be refocusing our strategic aims and resources more on the real-world climate dangers before us?

Lord Callanan (Con): My noble friend will be aware that, if we are to meet what is now a legally binding net-zero target, practically all homes—both new and existing buildings—will need to be net zero by 2050. We expect the cost of heat pumps to fall in a mass-market scenario, and the action that we are taking will help to bring down these costs—but the noble Lord highlights an important problem.

Baroness Thornhill (LD): From talking to my local authority colleagues, I know that their concern is that, for heat pumps to work effectively and actually reduce fuel bills, homes first need to be retrofitted to quite a high standard. However, it is commonly acknowledged that, as the Committee on Climate Change report last year stated, these policies are deemed to have failed, mainly due to the public's reaction to them. Basically, they cost too much, and it is too much hassle. So does the Minister agree that getting the public on board with retrofitting is a crucial first step towards meeting net-zero targets and that local authorities are absolutely crucial to that task? We must take the public with us.

Lord Callanan (Con): Indeed I do agree with the noble Baroness that we have to take the public and local authorities with us. As we will set out in the upcoming strategy, we acknowledge that there is further work to do to understand the many constraints that are facing us and how best we can work with both the public and local authorities.

Lord Colgrain (Con): Is the Minister aware that, within the current calculations of energy performance certificates, air-source heat pumps are given a poor rating on the basis that electricity is seen as an expensive way to heat a property. With current requirements to have at least an EPC E rating for any domestic residence, rising to a suggested D rating by 2025, could the Minister confirm that EPC regulations will be reviewed to reflect energy efficiency rather than the cost of energy?

Lord Callanan (Con): My noble friend well reflects my correspondence—I am receiving a lot of letters on this important issue at the moment. A call for evidence was issued in 2018 on how further to improve EPC accuracy and reliability and how these changes can be implemented. As my noble friend may be aware, the Government have published an EPC action plan detailing a series of actions that we can take to improve EPCs.

Lord Cameron of Dillington (CB) [V]: My Lords, is the Minister aware that if all our demand for heat as a nation goes electric, at peak heat requirement we will need five times the current peak electricity generating capacity, and that does not include any extra demand for electric cars and transport? What will the Government do to ensure that we have the correct and renewable generating capacity to cater for this revolution?

Lord Callanan (Con): We already work closely with Ofgem and key electricity network stakeholders to assess the network impacts and the future requirements arising from the increased deployment that the noble Lord highlighted. The work is focused also on how these requirements can be met cost effectively and practically, and on the potential role of flexibility in switching demand away from peak times.

Lord Grantchester (Lab) [V]: My Lords, in the absence of a heat and building strategy, with only a scattergun, 10-point plan at the start of another financial year for local councils, what will the Government implement to co-ordinate local area energy planning into an effective patchwork of integrated solutions, starting with incremental core funding schemes?

Lord Callanan (Con): The heat and building strategy will set how we will co-ordinate many of these plans and work with local authorities. As the noble Lord is aware, we have a number of incentive and funding schemes to help in this deployment.

Baroness Sheehan (LD): My Lords, I refer to the undertaking given in the Minister's letter of 25 January to a director of a company in the domestic heating decarbonisation sector promising that the green homes grant would support shared ground source heat pump installations in high-rise apartment blocks owned by social landlords. Up to last week, only one ground source heat pump had been supported by the GHG. When will this undertaking be implemented?

Lord Callanan (Con): The GHG is facing some delivery challenges, as the noble Baroness will be aware. The deployment of heat pumps is proceeding. I can find out the latest figures for ground source heat pump deployment and let her have them in writing.

Lord Birt (CB) [V]: My Lords, decarbonising home heating, responsible for around one-fifth of our emissions, is an enormous challenge. There are a number of different technological approaches to meeting it, not just heat pumps, all with uncertain practicality and unsettled economics. The Government have published a road map and a timetable for the transition to electric vehicles. Will they produce an equivalent plan for home heating?

Lord Callanan (Con): Yes is the short answer. As I mentioned earlier, we are developing options for how a long-term framework of policy approaches can set us on a path to decarbonising heat, homes and buildings. The heat and building strategy will set this out in more detail.

The Earl of Caithness (Con): My Lords, is my noble friend rural-proofing the new strategy? He will be aware that a lot of houses in rural areas are off the mains gas grid and will need alternatives because heat pumps are so expensive. Is he considering bioenergy fuels and other alternatives?

Lord Callanan (Con): Heat pumps are probably the best way of deploying electric heat in many rural areas, but we agree that it is a problem in rural areas that are not connected to the mains gas grid and often

have shaky electricity supplies as well. This is a challenge that we are aware of, and we are meeting many representatives from the sector to work out how we can overcome these problems.

The Senior Deputy Speaker (Lord McFall of Alcluith): My Lords, all supplementary questions have been asked. We now move to the next Question.

Hong Kong Courts: British Judges

Question

1.24 pm

Asked by ***Lord Truscott***

To ask Her Majesty's Government what assessment they have made of role of British judges in courts in Hong Kong; and what plans they have to prevent judges from participating in those courts.

The Minister of State, Foreign, Commonwealth and Development Office (Lord Ahmad of Wimbledon) (Con) [V]: My Lords, British judges have played an important role in supporting the independence of Hong Kong's judiciary for many years. We want and hope for this to continue. However, the national security law poses real questions for the rule of law in Hong Kong and the protection of fundamental rights and freedoms promised by China in the joint declaration. The UK judiciary is of course independent of government and it is for it to make an assessment of the issue. It is right that the Supreme Court continues to assess the situation in Hong Kong in discussion with Her Majesty's Government.

Lord Truscott (Non-Afl): My Lords, I thank the Minister for his reply, but is it not time that Her Majesty's Government make their position clear on this and take further action? Is it not wrong on many levels that British judges are active in Hong Kong, giving a veneer of respectability to wholly draconian laws which effectively stifle freedom of speech, freedom of assembly and free and fair elections?

Lord Ahmad of Wimbledon (Con) [V]: My Lords, let me assure the noble Lord that, as I said in my original Answer, we are working closely with the Supreme Court. The noble and learned Lord, Lord Reed, has already made it clear that he is co-ordinating his response in consultation with the Government. The important assessment to be made is in relation to the issue of judicial independence, as guaranteed by Hong Kong Basic Law, and the rule of law. This is under active consideration by the Supreme Court in consultation with the Government.

Lord Sharpe of Epsom (Con): My Lords, I declare my interest as a vice-chairman of the All-Party Parliamentary Group on Hong Kong. I am sure that many will have read this morning's disturbing story in the *Daily Telegraph* that BNO passport holders who apply for UK visas may be at risk of having their pensions withheld. That perhaps illustrates the current regime's contempt for established law. What steps have the UK Government taken in response to this and any other recent developments in Hong Kong?

Lord Ahmad of Wimbledon (Con) [V]: My noble friend is right to draw attention to this worrying development whereby the Mandatory Provident Fund Schemes Authority will no longer accept BNO passports. It is yet further evidence of the challenges which continue to be experienced in Hong Kong. The Government have acted by providing new immigration routes to BNO holders to the UK. We have suspended the extradition treaty with Hong Kong and put in place an arms embargo. We continue to call out, as we did on 13 March through my right honourable friend the Foreign Secretary, breaches of the joint declaration.

Lord Pannick (CB): My Lords, I last appeared in the Court of Final Appeal in Hong Kong two weeks ago. It was a remote appearance. It was 2 am, but the court seemed to me to be as independent as it has been since 1997. Will the Minister recognise that the judges in Hong Kong are doing everything in their capacity to maintain their independence and that they and the independent Bar in Hong Kong are very keen that the judges of this jurisdiction continue to support them and do not abandon them?

Lord Ahmad of Wimbledon (Con) [V]: My Lords, the noble Lord speaks with great insight on this matter, and I agree with him. That is why it is right that the Supreme Court makes a decision, but it is also right that it does so while consulting Her Majesty's Government. We pride ourselves on the strength of the independence of the judiciary. I hope that the authorities in Hong Kong do the same.

Lord Anderson of Swansea (Lab): My Lords, in the face of China's serial breaches of the 1984 Sino-British joint declaration, we have honoured our obligations and not done China's work for it. Is there not now a case for us to remain on that high ground and respect the wish of the Hong Kong legal community for distinguished judges to continue their work in the Court of Final Appeal, upholding the rule of law, until such time as the Chinese make their task impossible?

Lord Ahmad of Wimbledon (Con) [V]: My Lords, briefly put, I totally agree with the noble Lord. As I said in response to the noble Lord, Lord Pannick, our judges play an important role in Hong Kong and it is important that the final decision on them continuing in that role lies with the Supreme Court.

Baroness Northover (LD): My Lords, the judges have been termed the canaries in the coalmine. The noble Lord indicated that he fears it will not be long before their position may become untenable. What conversations on this matter have been held with the other common law countries, including Australia and Canada, from where the other judges come?

Lord Ahmad of Wimbledon (Con) [V]: My Lords, the noble Baroness is right to draw attention to the importance of the diversity of the judiciary in Hong Kong. I assure her that we co-ordinate with international partners, not just on this but on a number of matters relating to Hong Kong. As I have said, on the specific issue of UK judges, we are of course working very closely with the Supreme Court, in particular with the noble and learned Lord, Lord Reed, its president.

Lord Collins of Highbury (Lab): My Lords, I suppose the issue is whether the presence of British judges legitimises a political and legal system which is compromised as a consequence of the Chinese Government's changes to Hong Kong law. On 12 March, the spokesperson for the noble and learned Lord, Lord Reed, said that the Supreme Court had been

"in close contact with the British foreign secretary and lord chancellor on matters for some time, and is reviewing with them the operation of the agreement".

What has changed since 12 March? Are we likely to hear from the Lord Chancellor and the Government about a change in the role of British judges in Hong Kong?

Lord Ahmad of Wimbledon (Con) [V]: My Lords, I will not prejudge any announcement. It is important that we co-ordinate very closely with the Supreme Court. As the noble Lord will be aware, the role of the judges in Hong Kong is very much enshrined in basic Hong Kong law, under Articles 19 and 85, which guarantee their independence and freedom from interference. Those are important criteria and I am sure that, as I have already said, the Supreme Court is considering its position on this.

Lord Garnier (Con): My Lords, does my noble friend agree that the rule of law and the permanent and non-permanent judges in Hong Kong deserve all the support we can give them, and that the British and Commonwealth judges should stay, unless the independence of the judiciary is compromised by, for example, its being asked to enforce laws that were no longer in accordance with the rule of law, or it is undermined altogether? As my noble friend is well aware, I have been critical of the PRC's activities in breach of the rule of law and human rights, but will he accept that the removal of the non-resident judiciary would only please Beijing and damage the rule of law?

Lord Ahmad of Wimbledon (Con) [V]: I agree with my noble and learned friend, and other noble Lords who have spoken on this Question, that our judges, as well as those from other countries, play an important role in upholding the independence of the judiciary, which should continue to be free from any interference. As I have said, their role is enshrined in basic Hong Kong law and it is important that the Supreme Court makes the ultimate decision on the continuation of that role.

Lord Woolf (CB) [V]: My Lords, I refer to my entries in the register and my former position as a non-permanent judge of Hong Kong's Court of Final Appeal, and my engagements to establish, and then become, respectively, president and Chief Justice of the commercial courts in Qatar and Kazakhstan, both of which are modelled on our commercial court and have former senior British judges on the Bench. I also refer to the article by Lord Sumption in the *Times* and the article in the *South China Morning Post*. In view of the answers that he has already given, do the Minister and the Foreign Office appreciate that the reputation of justice and judges in this country is enhanced by judges performing the roles to which I referred? If our Government are seen to be interfering with the appointment of British judges who do this work, especially where, in Lord Sumption's apt words,

"In reality they are demands that judges should participate in a political boycott designed to put pressure on the Chinese Government to change its position on democracy",

then this will not continue.

Lord Ahmad of Wimbledon (Con) [V]: My Lords, I agree with the noble and learned Lord and recognise the important insight and experience that he brings to this debate. Equally, as I have already indicated in my previous answers, the Government are very clear that the independence of judges operating within Hong Kong must be free of political interference. However, it is right that we continue to work with the Supreme Court on its determination of that position. We call upon the Hong Kong authorities to respect the principle of these two aspects, which is enshrined within basic Hong Kong law.

The Senior Deputy Speaker (Lord McFall of Alcluith): My Lords, the time allowed for this Question has elapsed.

People with Disabilities Standing for Elected Office

Question

1.36 pm

Moved by ***Baroness Jolly***

To ask Her Majesty's Government what support they intend to provide to assist people with disabilities with the additional financial costs associated with standing for elected office.

The Minister of State, Cabinet Office (Lord True) (Con): My Lords, it is the Government's ambition to see more disabled people in public office. The Government have been clear that the responsibility for supporting disabled candidates sits with political parties and that the EnAble Fund was an interim measure to give parties time to put their own support in place. Ministers wrote to the main parties twice in 2019 to ask them how they intend to support their candidates on a long-term basis.

Baroness Jolly (LD) [V]: My Lords, I am grateful to the Minister for his response. I am sure he would agree that it is important that people with a disability are represented in Parliament. Can he tell the House how many MP's have a disability, and, in the last election where financial support was given to candidates with a disability, how many candidates were supported?

Lord True (Con): My Lords, I do not have all those specific figures. In relation to the EnAble Fund, 41 applicants were awarded funding and 19 were elected. Some 33 disabled candidates for the 2019 local elections received financial support through the fund, and of these 15 were elected. I will write to the noble Baroness on her other question.

Lord Dodds of Duncairn (DUP) [V]: My Lords, as the Government prepare their national strategy for disabled people, does the Minister accept that more must be done to facilitate disabled people, who face enormous challenges in seeking elected office? Will this issue be included in the strategy? Is it not time to consider reinstating some kind of financial support, given the staggeringly low number, proportionately, of disabled people in elected office in this country?

Lord True (Con): My noble friend makes an important point on which all parties would, I hope, unite. The reality is that the law regarding electoral expenses, permissible donors and grant-making is complex, and therefore the funding model has always been to contract with other organisations to deliver funding to political candidates. But I note what my noble friend says.

Lord Holmes of Richmond (Con): My Lords, does my noble friend agree that the Government may be able to perform a useful convening role with political parties, to gain more traction on this issue? In 2018, I was commissioned to produce a report on increasing access to public appointments for disabled people. Unfortunately, many of its recommendations remain unaddressed. Could I gently ask my noble friend whether the Cabinet Office could help get some more traction on this and on working together to get more disabled people into public life and public appointments, which play such an important part in our society?

Lord True (Con): I certainly agree with my noble friend about public appointments. I am sorry to hear what he said about his report. Certainly, it is the Government's wish to encourage more disabled people into public appointments. We wrote twice to political parties in 2019; at that time, there were not responses.

Baroness Campbell of Surbiton (CB) [V]: My Lords, it is well understood that there are multiple barriers faced by disabled people pursuing elected office that can be addressed only by providing adequate financial assistance. Would it therefore be helpful if the Government were to consider establishing an Access to Work model to assess the needs of disabled candidates and provide funding for reasonable adjustments? Such a tried and tested system would address many of the additional costs of standing for political office. It is work, and Access to Work is for work.

Lord True (Con): My Lords, I will ensure that the important suggestions put forward by the noble Baroness are taken into account as we go forward. I reiterate the Government's desire to see more disabled candidates for all parties.

Baroness Pitkeathley (Lab) [V]: My Lords, does the Minister agree that in the process of managing their disability, or the disability of someone they care for, people learn many skills, both practical and organisational, that are useful in public life and elected office? As the Government are rightly—[*Inaudible*]—will he also agree that it makes sound economic, as well as moral, good sense to give financial support to ensure that these much-needed skills are not lost?

Lord True (Con): My Lords, I agree with the noble Baroness's point about skills. I do not wish to repeat the point I made about the difficulty of direct funding. After the 2019 election, we put out an invitation to tender, seeking an independent scheme administrator to help retrospectively, but unfortunately we did not receive a response.

Lord Tyler (LD) [V]: My Lords, we all appreciate the efforts that the electoral administrators are making currently to assist disabled voters in the circumstances that we face. Since the Minister has acknowledged that the risk of fraud from large-scale postal voting is much greater than from cheating in polling stations, is he confident that all necessary precautions are in place for May's elections? In particular, with the return of postal vote applications to the authorities, will he do everything possible to prevent political-party interference, as apparently happened with the Conservative association in Mr Gove's constituency?

Lord True (Con): My Lords, I will not pursue the noble Lord's political allegations. This Government have a desire, which I hope all parties share, to avoid all fraud in elections. In the Covid situation, we need to take action, including late emergency proxies to enable all to cast their vote.

Baroness Gardner of Parkes (Con) [V]: My Lords, what steps are the Government taking to monitor the number of disabled candidates in the forthcoming elections? How will they use that information to inform government strategy to ensure that more disabled people stand for election?

Lord True (Con): My Lords, my noble friend raises an important point. The Government are reviewing evidence on the best ways to encourage more disabled people to run for elected office. An empirical understanding of how many have tried and how many have succeeded is important. I gave some of the figures earlier, and I will provide more in my response to the noble Baroness, Lady Jolly.

Baroness Wilcox of Newport (Lab) [V]: After scrapping the EnAble fund, apparently the Government are considering options for future support for disabled election candidates in connection with the national strategy. But disabled people deserve more than a consideration of options. Does the Minister agree that disabled people seeking elected office need a permanent fund to assist in removing the barriers that they face?

Lord True (Con): My Lords, not repeating the Government's view that we believe responsibility for supporting disabled candidates sits primarily with the political parties, and that the EnAble fund was a temporary interim, I agree that disabled people seeking elected office face a broad range of barriers; that is true, and not all are financial. The forthcoming evaluation of EnAble will help the Government understand all those aspects.

Baroness Falkner of Margravine (CB): My Lords, I declare an interest as chair of the Equality and Human Rights Commission. I hear what the Minister is saying

[Baroness Falkner of Margravine]
about the responsibilities of political parties. I agree, but does he also accept that Article 29 of the UN Convention on the Rights of Persons with Disabilities sets out obligations on the state to guarantee disabled people's political rights, including the opportunity to be elected on an equal basis with others?

Lord True (Con): My Lords, the Government's desire is to facilitate participation. I think the House is unified behind that. The question is how we best overcome the barriers, both financial and non-financial, and that is what we are all working on.

Baroness Bakewell of Hardington Mandeville (LD) [V]: My Lords, I hear what the Minister says about the responsibility resting with political parties. However, enormous costs can fall on those who have additional needs. What plans do the Government have in conjunction with political parties to encourage the disabled to stand in this coming May election, which is only around the corner?

Lord True (Con): My Lords, I commend what political parties are doing to seek to involve disabled candidates. We have evaluated the central fund's run; the access to elected office fund was expensive to administer, and the evaluation published in 2018 found that its impact on increasing participation by disabled people had been negligible. Going forward, we have to consider all these factors but keep the central objective of more disabled people in Parliament and council chambers in sight.

Covid-19: Impact on the Prison System

Question

1.47 pm

Asked by ***The Lord Bishop of Gloucester***

To ask Her Majesty's Government what action they are taking to address the impact of the COVID-19 pandemic on the (1) welfare, (2) rehabilitation, (3) sentence management, and (4) mental health, of prisoners.

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Wolfson of Tredegar) (Con): My Lords, protecting prisoners and their mental health and well-being has been our priority throughout the pandemic. We know that necessary health measures have come at a cost to other work, and we continue to support prisoners with their rehabilitation through vital family contact, education, work and exercise. We have learned lessons from the first wave; we have reduced inter-prison transfers, and we have had better success in moving prisoners to lower-category prisons to aid their rehabilitation.

The Lord Bishop of Gloucester [V]: My Lords, as Anglican Bishop to Prisons in England and Wales, I am aware that during the pandemic prison chaplains have continued to provide vital support, but other support services have been limited. Prisoners have been kept up for long periods, self-harm has increased, and Covid deaths and infection rates are on the increase. Therefore, will the Minister agree that the Government should follow the recommendation of the Independent Advisory Panel on Deaths in Custody regarding a wider vaccination of people living and working in prison, not least to allow proper exercise, socialisation and education?

Lord Wolfson of Tredegar (Con): My Lords, first, I pay tribute to the work the chaplaincy organisation does. Chaplains from all faiths do important work in our prisons. They have been there during the pandemic, and that is much appreciated. So far as vaccination is concerned, we follow the Joint Committee on Vaccination and Immunisation's recommendations on priority groups. Prisons have now been given permission to vaccinate all those in cohort 9, meaning everyone aged 50 and over. Noble Lords will be aware that the age range of the prison population is different from that of the population generally.

Lord Harris of Haringey (Lab) [V]: This month, the director of public health for Derbyshire confirmed that high rates of Covid infection in the dales are entirely attributable to the significant outbreak at HMP Sudbury. Indeed, nine of the country's 10 worst surges in Covid are occurring in areas around prisons with outbreaks. The Minister did not really respond to the right reverend Prelate's reference to the independent advisory board, which has repeatedly warned the Lord Chancellor that it is unsafe to require unvaccinated prison officers to escort prisoners with Covid to hospital in handcuffs or to require prisoners to share small, poorly ventilated cells with someone who has the virus. That advice has been ignored. This is endangering not only those on the prison estate but those in the surrounding communities where prison officers live. Why?

Lord Wolfson of Tredegar (Con): My Lords, I do not want to repeat what has been said, but on vaccinations we are following the approach of the Joint Committee on Vaccination and Immunisation, which we consider appropriate. The action we have taken in prisons has meant that the number of deaths seen in them is significantly lower than the approximately 2,700 deaths modelled by Public Health England last spring. There is rigorous testing in all our prisons and we do everything to make sure that there is no transmission of the virus into or out of them.

Lord German (LD) [V]: If we are to end the miserable sight of the Friday queue of released prisoners with plastic bags standing at the bus stop with nowhere to stay and no work or training, rehabilitation work must be started and continued before and after the prison gate. Meaningful training has all but halted in our prisons, so can the Minister reassure us that everything that can be done will be done—within the next weeks, not months—to enable the programme of rehabilitation training in prisons to be recommenced? If it cannot, will the Government reduce the prison population?

Lord Wolfson of Tredegar (Con): My Lords, I assure the House that everything that can be done within the appropriate prison regimes, given the prevalence of the pandemic, will be done. Releases are a different situation; we monitor them against the prevailing pandemic issues.

Baroness Rawlings (Con) [V]: My Lords, Covid has had a debilitating effect on so many people, but it is even more difficult to cope with in prison. What are HMG doing to allow more outside activities in these times, for rehabilitation and to help the mental health of prisoners?

Lord Wolfson of Tredegar (Con): My Lords, the mental health point is critical. We continue to work with our partners in the NHS on mental health and have put in place a number of additional provisions to this effect. On videocalls with families, we have given increased PIN credit to ensure that prisoners can call their families more often, and we have also provided packs which prisoners can use in cells. There is no doubt that mental health is a problem, but one must bear in mind when considering this that many people in the prison population came into prison with mental health issues.

Lord Laming (CB) [V]: My Lords, following on from the noble Lord, Lord German, is the Minister aware that there is an increasing number of offenders being discharged from prison on a Friday afternoon with little money and nowhere to live? Does he accept that this is a perfect recipe for further crime and, sadly, more victims of crime? What action is being taken to put in place robust, effective, proper discharge arrangements for these offenders?

Lord Wolfson of Tredegar (Con): My Lords, the position on money is that prisoners are released with a discharge grant. There can also be an extra payment to an accommodation provider, together with an appropriate travel warrant. However, accommodation is key. We are launching a new accommodation service which provides up to 12 weeks of basic temporary accommodation for prison leavers who would otherwise be homeless. We are trialling that in five of the 12 national probation regions in England and Wales. We believe it will mean that 3,000 prison leavers will be kept off the streets. Keeping people off the streets and giving them money until they can access social benefits is critical.

Lord Ponsonby of Shulbrede (Lab) [V]: My Lords, does the Minister agree with Peter Dawson, director of the Prison Reform Trust, when he said:

"Empathy and kindness from many staff have made a real difference"

to prisoners,

"and it will be full active days spent out of the confines of a nine foot by six foot cell that define recovery in the longer term"?

Does he also agree that videoconferencing can play an important role in keeping prisoners in contact with their families?

Lord Wolfson of Tredegar (Con): My Lords, I am in substantial agreement with the noble Lord on both points. I am very grateful that he mentioned videoconferencing, because that is something we have put a lot of time and resource into. Of course it is not as good as seeing somebody literally face to face, but I believe we have all found out over the last few months that videoconferencing is a decent substitute when real face-to-face contact is not possible.

Lord Jones of Cheltenham (LD) [V]: Will the Minister look at the study *Rehabilitation by Design*, which was sent to the Ministry of Justice and the Home Office, and emulate experiences from around the world which make prisons better places of learning and true rehabilitation as well as making it easier for prison officers to monitor the condition of prisoners?

Lord Wolfson of Tredegar (Con): My Lords, we look at a broad range of research, including the study to which the noble Lord referred. We drew on that study when designing the new-build prisons to ensure that the additional 18,000 prison places are safe, decent and secure. We have committed over £4 billion to deliver these prison places across England and Wales by the middle of this decade.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, given the Government's intention as expressed in the Police, Crime, Sentencing and Courts Bill to replace prison terms with community sentences for less serious crimes, would it not make sense to immediately follow the call from the Prison Reform Trust, noting the exceptionally harsh restrictions prisoners have been enduring, for the release of low-risk prisoners who might well not be imprisoned under the brand new law to ease pressure and improve conditions for prisoners and staff, and reduce pandemic risk?

Lord Wolfson of Tredegar (Con): My Lords, the plan for managing releases continues to be guided by the appropriate legislation and a public health assessment of what can safely be implemented. I am sure we will debate the Bill to which the noble Baroness refers at length over the coming months.

Lord Randall of Uxbridge (Con) [V]: My Lords, I declare my interest as a trustee of the Saracens Sport Foundation. In normal times, the foundation runs an excellent project that reduced reoffending dramatically among young offenders. It was put on hold and the beneficiaries were allowed out of their cells for only 30 minutes per day because of the lockdown. However, a lockdown letters campaign was organised where many people in the Saracens community wrote to every individual inmate on the project to keep them connected while sharing their own experiences of lockdown. Does my noble friend agree that these are just the sorts of things we must look at to help rehabilitate inmates post Covid?

Lord Wolfson of Tredegar (Con): My Lords, the very short answer is yes. The slightly longer one is that I agree with my noble friend that programmes such as this are just the sorts of things which are important to ensure the successful rehabilitation of inmates. I commend the Saracens Sport Foundation on all its work to support inmates to stay connected during the pandemic. Sport and physical activity play a very important role in prisons. That has been curtailed during the pandemic, but I hope very much that we will be able to resume it, with the support of partners such as the Saracens Sport Foundation, and that we can provide such activity both inside and, with appropriate supervision, outside prison.

The Senior Deputy Speaker (Lord McFall of Alcluith): My Lords, the time allowed for this Question has elapsed.

1.58 pm

Sitting suspended.

Corporate Insolvency and Governance Act 2020 (Coronavirus) (Change of Expiry Date) Regulations 2021

Motion to Approve

2.03 pm

Moved by ***Lord Callanan***

That the draft Regulations laid before the House on 11 February be approved.

Relevant document: 46th Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 18 March.

Motion agreed.

Financial Reporting Council (Miscellaneous Provisions) Order 2021

Motion to Approve

2.03 pm

Moved by ***Lord Callanan***

That the draft Order laid before the House on 8 February be approved.

Considered in Grand Committee on 18 March.

Motion agreed.

Representation of the People (Proxy Vote Applications) (Coronavirus) Regulations 2021

Motion to Approve

2.04 pm

Moved by ***Lord True***

That the draft Regulations laid before the House on 22 February be approved.

Relevant document: 48th Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 18 March.

Motion agreed.

Health and Social Care Update

Statement

The following Statement was made in the House of Commons on Thursday 18 March.

"With permission, Madam Deputy Speaker, I would like to make a Statement on the support that we are giving to the NHS and social care to help recover from the pandemic.

Before turning to that, I want to update the House on vaccine supply and the rollout, and set out the facts, given some of the speculation that we have seen overnight.

Let me set out the position absolutely straightforwardly. Throughout the vaccination programme, the pace of rollout has always been determined by the availability of supply. As I have said in the House many times, supply is the rate-limiting factor. The process of manufacturing vaccines is complicated and subject to unpredictability. Because we get supplies out into the field so fast, and run a highly lean delivery system, changes in future supply schedules impact on the weekly availability of vaccine. This has been true throughout. We make public commitments to the goals we can reach according to our best estimates of future supply. That supply goes up and down. We are currently, right now, in the middle of some bumper weeks of supply.

We have now reached the milestone of 25 million vaccinations, within the first 100 days of rollout, and we have therefore been able to open up invitations to all people aged 50 and above. Yesterday, for example, we delivered over half a million vaccines, and we will do so again today. In April, supply is tighter than it is this month, and we have a huge number of second doses to deliver. During April, around 12 million people, including many colleagues in this House, will receive their second dose. These second doses cannot be delayed, as they have to be delivered within 12 weeks of the first dose. In the last week, we have had a batch of 1.7 million doses delayed because of the need to re-test its stability. Events like this are to be expected in a manufacturing endeavour of this complexity, and this shows the rigour of our safety checks.

We also have a delay in a scheduled arrival from the Serum Institute of India. I want to put on the record my gratitude to the Serum Institute of India for the incredible work that it is doing producing vaccine, not just for us in the UK but for the whole world. Its technology and its capability, which has been approved by the Medicines and Healthcare products Regulatory Agency, is remarkable. The Serum Institute of India is producing a billion doses of the Oxford AstraZeneca vaccine this year. It truly is a partnership that we can be proud of. I also want to put on the record my thanks to both AstraZeneca and Pfizer, who have been remarkable partners in this historic endeavour.

We have committed to targets, it is vital to say, to offer the vaccine to everyone aged 50 and over by 15 April and to all adults by the end of July. I can confirm that we are on track to meet both those targets. I also want to clear up some rumours that have been circulating and give people reassurance. There will be no weeks in April with no first doses. There will be no cancelled appointments as a result of supply issues. Second doses will go ahead as planned.

Most importantly, the vaccine data published yesterday show the life-saving impact of this vaccine. It is not just that the vaccines are safe; it is that they make you safe. You are much safer having had one. Shortly, the MHRA will be saying more on this matter, which of course it keeps under constant review.

I know the House will also want to hear some good news from Gibraltar. Throughout the crisis, we have provided Gibraltar with personal protective equipment, testing and a sovereign guarantee for its Covid spending. We have also provided Gibraltar with vaccines, as we have all other British Overseas Territories. I am delighted

to be able to tell the House that yesterday Gibraltar became the first nation in the world to complete its entire adult vaccination programme. I want to pay tribute to all Gibraltarians for their fortitude during this crisis, and the kind words of Chief Minister Fabian Picardo, who said yesterday:

'The United Kingdom has played a blinder on vaccinations and we have been among the beneficiaries in the British family of nations.'

I agree.

The vaccination programme has been a success thanks to a team spirit across the British family of nations. It has not always been easy; of course there are challenges thrown at us in what is the biggest civilian undertaking in history, which affects every single one of us. The whole House pays tribute to those who have helped make it happen, including Emily Lawson, Kate Bingham, Maddy McTernan, Ruth Todd, Nikki Kanani, Professor Jonathan Van-Tam, Professor Chris Whitty, Sir Patrick Vallance, Wei Shen Lim, Sarah Gilbert, Andy Pollard, Pascal Soriot, my officials in the department, colleagues across the House, and so many others who have made this a success.

With 25 million people vaccinated and a clear road map out of lockdown, we are taking careful steps out of this pandemic. Now, there are 7,218 people in hospital with Covid across the UK, down from a peak of almost 40,000 just seven weeks ago, the rate of hospitalisations has halved in just the past 16 days and, thankfully, the rate at which people are dying has fallen by a third in the last week.

As a result, I can tell the House that we are, from today, writing to all clinically extremely vulnerable people to let them know that shielding will come to an end on 31 March. I thank all those who have shown such fortitude, and all those who have done so much to look after the most vulnerable. The shielding programme truly has been Britain at its best—pulling together to help those most in need.

I know that colleagues in the NHS and social care are beginning, cautiously, to look to the recovery ahead. I know that everyone in this House is proud of the life-saving work we have seen in hospitals across the country. Yet we also know that our battles against covid-19 have meant that there are things that we have not been able to do, such as routine treatments and operations. The challenges of Covid are still with us. We must continue to treat patients with the disease and bolster our vital mission of infection control, while also laying the groundwork for a recovery that gets us back to where we need to be.

We have backed the NHS at every point in this pandemic so that it can treat patients, stay safe and save lives, and I am delighted to inform the House that we are backing it again today with a further £6.6 billion of funding for the first half of this coming financial year. This money is in addition to the £3 billion committed at the spending review last November to help the NHS meet the additional costs of Covid while, critically, starting the work on the elective recovery ahead.

Due to the pandemic, the waiting list for elective treatment in January was almost 4.6 million, and 304,000 people are waiting more than a year for an operation or diagnostic. Before the pandemic, we had reduced the number of 52-week waits—people waiting more than a year—from 20,000 in 2010 to 1,600. We were in fact on track to get that number to zero before the pandemic hit. This backlog of elective work is an inevitable consequence of the pandemic, and I know that NHS colleagues are as determined as I am to put it right.

We are also putting £594 million towards safe hospital discharge. Over the last year, the NHS's existing discharge programme freed up over 6,000 beds and, with them, the valuable time of 11,000 NHS staff. We can be grateful that we are seeing so many people leave hospital and that our discharge programme has shown the way forward, ensuring that people can get the very best of care outside of our hospitals, helping them off the wards and into the right settings, with the right support at the right time.

Our £500 million mental health recovery package will help tackle the challenges that the pandemic has wrought in access to mental health services. I can also confirm that we will be extending enhanced discharge arrangements for mental health patients, getting patients safely from hospital into healthy community settings, providing better care and freeing up thousands of beds.

The challenge of mental ill health is so important. We all need to keep looking out for each other and doing all we can to strengthen our mental health. Tackling mental ill health is a core objective of our NHS long-term plan, and this Government are committed to seeing mental health treated on a par with physical health and to delivering on the long-needed reforms that we have set out.

I am equally committed to supporting the vital work of our colleagues in adult social care. Last Monday, we reopened care homes to visitors, with a careful policy of a single regular visitor, who will be tested and wear PPE. I know how important this is, and I know that colleagues will be cheered by the stories we hear each day of more and more residents safely reunited with people they love. It means everything to them.

I can today announce a further £341 million to support adult social care with the costs of infection prevention, control and testing that will make sure that visits are safe for everyone. That takes the total infection control fund and testing support to more than £1.6 billion, alongside the free PPE that care homes receive.

The pandemic has tested our NHS and our social care system like never before. That they have risen to meet the challenges of the past year is down to the incredible dedication and hard work of colleagues—they have our thanks. We will deliver on our commitments. We will build 40 new hospitals. We will hire 50,000 more nurses. We will vaccinate this country ahead of almost all others. We will back our NHS and social care as we build back better for everyone. I commend this Statement to the House."

2.04 pm

Baroness Thornton (Lab): My Lords, I thank the Minister for the Statement from last Thursday. We heartily welcome the rollout of the vaccine and place

[Baroness Thornton]
on record huge gratitude to the scientists from everywhere, the NHS staff—all of them—the local government officials, the pharmacists and the volunteers who have worked so hard and seamlessly to produce such a successful outcome so far. I also take this opportunity to support the AstraZeneca vaccine. I am sure we were all very pleased with the news from the USA, which supports all the scientists in the UK and Europe, that the AZ vaccine is both effective and safe.

However, it was not great news to learn that this amazing vaccine effort will have to slow down due to supply problems, and, I have to say, that did come as a surprise. We have one of the worst death rates in the world and our economy has taken a massive hit. Many key workers under the age of 50—such as teachers and police officers—who through the nature of their work have not been at home, are going out and are more exposed to risk. I imagine that many had hoped that vaccination for them was not very far away. An update on the vaccine supply, particularly on the issues around discussions with the European Union, which seem to have become more fractious, would be appreciated.

But, specifically, what has happened to the Moderna vaccine? I understand that it will start in April. Is there any prospect that, if Moderna supplies come on stream, new appointments can be offered in light of that? Can the Minister assure the House about the second vaccine which many of us await? Will there be sufficient supply and will providing the millions of second jabs delay further the first vaccines for the 30 and 40 year-olds? It seems that the vaccination programme will need to ramp up to about 3.5 million doses a week from May to ensure that everyone under 50 is vaccinated by mid-July. Is the Minister confident that these supply issues will be fixed by May?

Adam Finn of the Joint Committee on Vaccination and Immunisation said that infection rates may rise as a result of the delays. Does the Minister anticipate that any of the stages or dates in the road map for easing out of lockdown will be pushed back, given that we are rightly judging the road map by data, not dates?

There are two other issues that we particularly need to address today. May I ask about the impact of the EU-AZ concern on vaccine hesitancy in the UK? It has been reported that there was a jump in no-shows and people questioning or refusing to go ahead with the AZ vaccine in the last week or so here in the UK.

Many poorer areas today still have the highest infection rates relative to elsewhere in the country, and at the same time their vaccination rates are below average. The worry is that places such as Oldham, Leicester or Hartlepool might be facing a double whammy: they still have high infection rates, but they are not getting the vaccination rates up to the levels needed. Not only will the disease continue to circulate there, with the risk of people catching it becoming severely ill, this also raises the question: will these towns and cities be left behind as the rest of the country eases out of lockdown? Some areas such as Leicester have endured the longest coronavirus restrictions of any part of England, remaining in lockdown since last summer. Closer to home here in London, I understand that in Enfield there are 16,000 people who do not have GPs and are in wards with high levels of poverty, high Covid rates and low vaccine rates—some as low as 55%. What are the Government's plans to support these areas and ensure that they are not left behind?

Secondly, vaccination centres are detecting a rising number of queue jumpers as Britain prepares to face a four-week jab drought. Officials say that people pose as care or health workers to cheat their way to an early jab and fear that fraudulent bookings will soar before next month's slower rollout. When the cheats are caught, vaccination slots that could have gone to people entitled to a jab are wasted. In addition, according to anecdotal evidence and the *Times* article of yesterday, it seems that some centres more recently are not being diligent about requiring proof of the eligibility of the person claiming to be a care worker.

Anyone can fraudulently book a jab on the national booking website by ticking a box to say that they work in health or social care or provide "personal care" for people in their homes. The NHS insists that those who do this but do not bring proof of that to their appointment "will not be vaccinated". But officials say that the loophole means that rising numbers are trying to exploit a system that is "open to abuse". Some sites are catching 15 queue jumpers a day and fear that more are slipping through. The problem is that those appointments are lost and those vaccinations wasted. The centres therefore face a "difficult balance" between wanting to avoid wasted doses and appointment slots and rigorously checking ID cards. Bhaveen Patel, who runs a Covid-19 vaccination clinic in Brixton, says that he turns away 15 queue jumpers a day.

Finally, children make up about 21% of the population. That is a large segment of the population who will lack immunity. Obviously, research and trials are ongoing, but does the Minister have a timeline for when he hopes to vaccinate children? Does he anticipate, for example, being able to vaccinate children this autumn, as Anthony Fauci in the US has suggested could well happen over there?

Baroness Brinton (LD) [V]: My Lords, from these Benches I also thank the noble Lord for the Statement given in the Commons last Thursday and thank and congratulate everyone involved in the creation and delivery of all the vaccines so far, and for their continuing work to protect the world against mutant strains of the virus. It is good news at a time when much else is still worrying.

I also start with the availability of supply. Can the Minister explain to the House what guarantee there is for people on receiving their second doses? He has reassured the House before, but I am hearing from GPs worried that they have not had confirmation that they will receive enough doses or that they are getting any supplies at all at the moment, as well as from people who have had their first dose from their GP but who have been told they cannot book their second dose via the online national system because their first dose was delivered by their GP. There are a lot of confused people around.

Today's news about the EU-UK war of words on the vaccine supply chain gets more bizarre by the hour. Are Ministers seriously considering holding back

exports of the special lipids from the UK to the EU as a proposed retaliatory action if the EU holds back doses in the Netherlands? There should not be a war of words but the best possible collaboration to ensure that the "lumpy supply", to quote the Prime Minister, is smoothed out.

On the issue of queue jumpers, both the NHS and the care sector have an effective ID system that has been in place for some time, although obviously it was probably easier to do when they were in the first group of people to be vaccinated. What are the Government doing to ensure that every vaccine centre understands what they need to see from people presenting for vaccines from the care sector?

On the hesitancy in uptake, I too have heard of the increase in no-shows. What are the Government doing to encourage especially those from the first six groups who have not yet come forward to do so? The publicity campaign that is beginning on reassurance about the AstraZeneca dose is good, as is the test news, but we need much more than that. We know that hesitancy tends to be reduced when people, especially doctors and nurses, talk directly to their patients.

As we have said from these Benches, it is good that the UK is playing its part in funding vaccines via COVAX. However, there is a lot of discussion at the moment that the UK should support TRIPS and encourage the sharing of intellectual property rights of vaccines. I have some concerns about this approach and agree with Professor Sarah Gilbert, who said:

"If another company tries to take the IP and go it alone, they are manufacturing a different product. The regulators would see it as a different product; it would have to go through all the efficacy trials again, and that would be very wasteful and very slow. I want to get rid of the idea that we should be sharing the IP and letting everybody make their own vaccines. It does not work like that. We have a way of sharing the materials and the expertise, and that is what we have been working very hard to do. That is the correct way to do it, because that is how we get the right vaccines to as many people as possible."

The work of places such as the Serum Institute of India are examples of how this collaboration can work at its best. Can the Minister say what the Government will do to encourage and support more examples of such collaboration worldwide? Can he also say whether the UK Government plan to donate some of the spare doses that they have ordered to less developed countries and on what timescale this might be enacted?

The Statement refers to the end of shielding on 1 April. As a shielder, I have received another long letter from Matt Hancock and Robert Jenrick which says to shielders:

"Until the social distancing rules are eased more widely, it is important that you continue to keep the number of social interactions that you have low and try to reduce the amount of time you spend in settings where you are unable to maintain social distancing. Everyone is advised to continue to work from home where possible, but if you cannot work from home you should now attend your workplace. Your employer is required to take steps to reduce the risk of exposure to COVID-19 in the workplace and should be able to explain to you the measures they have put in place to keep you safe at work … From 1 April you will no longer be eligible for Statutory Sick Pay … or Employment and Support Allowance … on the basis of being advised to shield. Clinically extremely vulnerable pupils and students should return to their school or other educational settings."

I said last year when I received an almost identical letter that this feels very strange. You are told that shielding ends but you should continue to do all the things you were doing before shielding—unless you were in receipt of SSP or ESA, because that is no longer available for those who have to go back to work in an unsafe workplace. In response to a question about shielding I asked at a briefing the Minister kindly held for parliamentarians with Chris Whitty, he said that shielders who are immunosuppressed should continue to shield unless the results of the OCTAVE clinical trial for immunosuppressed people was available. But it has not been announced yet. There is total silence from the Government, but there are many immunosuppressed people who will have received this letter and think that they are okay to start moving around more.

The end of the Statement talks about safe discharge, and the £594 million for safe discharge is welcome, but is that to go to the NHS or the better care fund, or will part of it go to local government? Is the £341 million mentioned later in the Statement to support adult social care with the costs of infection prevention part of that same £594 million or is it in addition and completely separate? How will that money get to social care providers?

Once again, why is only adult social care getting this funding? Once again, paid and unpaid carers for young disabled people, who are often extremely vulnerable to any infections, not just Covid, appear to be excluded from this grant. Can the Minister please explain?

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): My Lords, I am enormously grateful for the questions from both noble Baronesses. I will try to address them and if I omit any, I will be happy to write to them with more details.

I will speak first about supply and its importance to the rollout of the vaccine. We have always said that a vaccine programme of this pace and scale may have lumpy interruptions in supply. Noble Lords will be aware that we have done incredibly well to get to the kind of rates that we saw over the weekend in the way that we have; more than 800,000 in a single day is an absolutely astonishing figure. However, delays are envisaged. This is in part due to a delay to a shipment from the Serum Institute of India, which is doing a herculean job of producing vaccines in such large quantities, and because of a batch that we already have in the UK that needs to be retested. We will receive slightly fewer vaccines in April that we did in March but that is still far more than we did in February, and the supply that we have will still enable us to hit the targets that we have set. I emphasise that point. That means that by 15 April we will be able to offer a first dose to everyone over 50 as well as those who are under 50 but clinically vulnerable. It also means that we will be able to give second doses to everyone who has had a first dose within the 12-week window, which means around 12 million second doses in April. It also means that we will be able to offer a first dose to every adult by the end of July. I hope that provides the reassurance that the noble Baronesses, Lady Thornton and Lady Brinton, are looking for.

[Lord Bethell]

On the Moderna vaccine, it is a fantastic achievement that the British Government have secured 17 million doses. These will come into play by mid-spring, and my understanding at this stage is that they will be in time to help supplement the rollout of the vaccine to some of the cohorts 1 to 9 at the end of April.

The noble Baroness, Lady Brinton, asked about our approach to EU relations. I reassure her that the British Government are utterly committed to a spirit of partnership and to respect for contract law in all our dealings. If the noble Baroness has good networks and friendships in Brussels and other EU capitals, it would be much appreciated if she could communicate those values to those in her network.

On those without GPs who would like to have the vaccine, I reassure the noble Baroness, Lady Thornton, that it is possible to get the vaccine without a GP, an NHS number or an NHS login. There are systems in place, and if anyone turns up at a vaccine centre without any of those materials, they will be guided and given the assistance they need to get the vaccine they need. I emphasise that the vaccine has proved to be a terrific opportunity for a lot of people to get to know their NHS number a bit better, to bring their GP records up to date and for many to register with an NHS login in order to get to know their patient records a bit better. It will be a massive inflection point in the digitalisation of the NHS, and that is an opportunity we are grabbing with both hands.

I will take some of the noble Baroness's questions about queue jumping back to the department. I do not know the specifics of the stories that she described, but I reassure her that NHS records are matched against those for the vaccine, as are those for social care. We do not take a blind or naive approach to the rollout of the vaccine, but it is true that it is not the role of vaccine centre staff heavily to police those who come forward for the vaccine. I am not aware that this has been a material issue, but I should be glad to find out more for her.

Of course we are fully aware of the dangers that the European rhetoric on the AstraZeneca vaccine might lead to a rise in hesitancy here in the UK, but I reassure the noble Baroness, Lady Brinton, that the signs are not there yet. It would seem that the British public remain incredibly committed to the vaccine rollout, the numbers coming forward remain astonishingly high and the public attitude surveys that we are doing seem reassuringly concrete.

We are extremely keen to nut through the last remaining numbers in the cohorts 1 to 9. These few weeks will give us a really good opportunity to give time to GPs and other healthcare staff to spend time in dialogue with those who have legitimate questions. That principle of dialogue and answering questions has been the way we have approached the entire vaccine rollout, and we will continue to use that dialectic method in order to get people over the line. We are also very keen to get the vaccine rolled out among younger people, including, perhaps—if the clinical advice is affirmative—children. It is of course the case that children are eligible for and encouraged to take the flu vaccine, not because they are particularly in danger of hospitalisation or severe disease from flu but because they are transmitters of flu. Exactly the same principle applies to Covid. That is why we are extremely keen to get the message across to young people, and it is extremely reassuring that the rollout of the vaccine among older people may have a profound effect on loved ones in the same family unit. We are hopeful that that will be a big influence on younger people.

On our international approach, I reassure the noble Baroness, Lady Brinton, that Britain is as collaborative as a country possibly could be on the vaccine. I take my hat off to AstraZeneca, which has an extremely collaborative approach and, as she knows, a no-profit protocol for the vaccine. The MHRA has led the way in transparency and sharing of data. On therapeutics and clinical trials, we have shared an enormous amount of data around the world. We remain enormous financial sponsors of all the major vaccine programmes, including COVAX, Gavi, ACT and the others. This approach will continue, and we remain convinced that Britain should take a leading role in the global rollout of the vaccine. We will be using our chairmanship of the G7 to play that role.

Lastly, I hear and appreciate the comments of the noble Baroness, Lady Brinton, on the shielding letter. Those who are shielding are in a very awkward position, but I am afraid that it cannot be solved overnight. The OCTAVE programme is extremely ambitious: it is looking carefully at extremely complex and difficult questions about those who, for one reason or another, have suppressed immunity, and that includes a very broad range of conditions. Professor Paul Moss at Birmingham University Hospital, who is leading that programme, is doing a terrific job, and I pay tribute to him and all his team. We are looking at whether they have the right amount of resources. I had reassurances very recently that everything was in place, but we are looking extremely closely at this area, because the noble Baroness is right: those who have suppressed immunity are in a very special case and we need to be absolutely sure that they have the right vaccine delivered at the right time and the right information to make the decisions necessary to go back into life. Those decisions simply cannot be rushed. A passage of time is necessary to understand the effect of the vaccine on the human body, but we are doing everything we can to answer those important questions.

The Deputy Speaker (Baroness Garden of Frognal) (LD): My Lords, we now come to the 30 minutes allocated for Back-Bench questions: it is 30 minutes, not 20, which was printed in error on today's list. Even with that extra time, I ask that questions and answers are brief so that I can call the maximum number of speakers. The noble Lord, Lord Lansley, has withdrawn, so I call the noble Baroness, Lady Hayman.

2.27 pm

Baroness Hayman (CB) [V]: My Lords, a descent into a tit-for-tat vaccine war would obviously be disastrous, given the global nature of both vaccine supply chains and the pandemic itself. Given the worrying developments that we have seen in this area, what research has been done and consideration given to the possibility of

mixing and matching second doses with a different vaccine—something which was talked about originally and might become necessary in the light of particular difficulties in supply chains?

Lord Bethell (Con): My Lords, I completely agree with the noble Baroness that a descent into some type of vaccine war would be extremely regrettable, and the British Government are doing everything they can to continue in a spirit of partnership with overseas Governments. We have not reached the possibility of taking on a mixing and matching approach. We believe that the supply chain we have in place is ample to achieve the targets we have already published. However, to answer her question directly, there is some evidence that mixing and matching may prove to be even better than having two of the same vaccine—that it may stimulate the immune system in ways that give you a more developed response to the virus. Therefore, we continue to look carefully at this possibility.

Lord Faulkner of Worcester (Lab) [V]: My Lords, the Minister is right to draw attention to the success of the vaccination programme, but does he not agree that last Thursday's Statement is rather light on advice on what people should do to protect themselves and others until the lockdown ends? In particular, there is no reference to the need to continue wearing face coverings. The Minister will recall that he kindly wrote to me about this on 28 January. His letter included the advice that, "The public should not challenge people for not wearing a face covering." Will he now consider changing that advice as, surely, the wearing of masks is as important as social distancing and avoiding large gatherings?

Lord Bethell (Con): I am extremely impressed by the noble Lord's perseverance on this issue. I know that he feels very strongly about the need for members of the public to be involved in policing the wearing of masks. However, that is simply not the way in which the British administration of guidelines is handled in this country; it is for those who are put in positions of badged authority to implement them. I simply cannot advocate that members of the public should intervene on one another to insist on, or apply any form of retribution regarding, the wearing of masks.

Baroness Jolly (LD) [V]: My Lords, I welcome the Statement and the Government's ambition. At the end of the Statement, there is a commitment to building 40 new hospitals, hiring 50,000 more nurses and backing the NHS and social care. Can the Minister outline what sort of backing the social care sector can expect, and by when?

Lord Bethell (Con): My Lords, I am grateful for the broad and large hook that the noble Baroness has provided me with. I reassure her that not only do we have a massive amount of support already in place for social care to help it through the current pandemic and the huge amount of pressure that has been put on its staff, residents and supply chain; we also have put in place an enormous amount of financial support for local authorities to ensure that they can provide the kind of improvements to social care that are needed. One area in which we have made enormous advances is care tech—that is, digital and technologically driven support. It has taken a huge step forward in the last year and impacted enormously on the lives of those in social care of all kinds.

Baroness Penn (Con): My Lords, we are having technical difficulties. I beg to move that the House do now adjourn until 3 pm.

2.32 pm

Sitting suspended.

3.01 pm

The Deputy Speaker (Lord Haskel) (Lab): My Lords, the House will now resume with questions on a Statement made in the House of Commons on 18 March: Department of Health and Social Care Update.

Lord Forsyth of Drumlean (Con) [V]: My Lords, what contingency plans do the Government have in place should the EUC/EU pursue its outrageous threats to prevent the export of vaccines under a legal contract with the NHS? In that event, can my noble friend say what estimate he has made of the delay, if any, to completing the undertaking he gave earlier that all adults in the UK will have had their first dose by the end of July?

Lord Bethell (Con): My Lords, from the beginning, we have put in place arrangements for the UK manufacture of vaccines, which, in the light of events, has proved to be a pragmatic and sensible move. We are hopeful that the EU will continue in the spirit of partnership and will respect contract law. I stand by the statement I made on our expectations on the supply of the vaccine to cohorts one to nine and all adults that I articulated earlier.

Baroness Greengross (CB) [V]: My Lords, what is the Government's response to the 2020 report from Amnesty International which suggests that the Government, while knowing the vulnerability of many older people, failed completely to protect care home residents? People were discharged into care homes without testing, which, according to Amnesty, breached their human rights and contributed to the fact that the UK had the highest death toll in Europe at the time.

Lord Bethell (Con): My Lords, I simply do not recognise the characterisation that the noble Baroness has just presented. The view of our treatment of the elderly and vulnerable taken by Amnesty during the pandemic is completely inappropriate and inaccurate. Huge steps have been taken to protect those who are vulnerable and elderly. I cannot think of a country that could have done more under the circumstances. I therefore reject its analysis.

Baroness Warwick of Undercliffe (Lab) [V]: My Lords, this is a Statement on health and social care. I am astonished that the Minister has confined the Government's policy on adult social care following the

[Baroness Warwick of Undercliffe]
pandemic to a couple of sentences. He must know that most of the adult social care in this country is provided by family carers. They are regularly ignored in such Statements, but many of the 6 million carers looking after vulnerable adults, including those with learning difficulties, have been pushed to breaking point by the pandemic. Is there nothing to say to them about access to support services or respite care and nothing on carer's allowance? Without support for these essential carers, policies such as enhanced hospital discharge, as mentioned in the Statement, will not be feasible. What is the Government's strategy for dealing with this crisis in care?

Lord Bethell (Con): My Lords, I endorse completely the noble Baroness's remarks that we depend on the generosity, public spirit and kindness of family carers who provide an enormous amount of support for their loved ones. Without them, the system could not possibly exist and the world would be a much graver place. I recognise that many carers have been pushed very hard by the pandemic. We have put a huge amount of resource into local authorities, which are responsible for providing support for those families, and that includes the kind of respite support that the noble Baroness has rightly pointed to. I am sure that more could be done and I would welcome any correspondence on this by way of follow-up that she would like to send my way.

Baroness Sheehan (LD): My Lords, the Serum Institute of India is producing a billion doses of the Oxford/AstraZeneca vaccine this year. However, we hear that the rate of production may be compromised because of delays in the supply chain of essential items from the US. What dialogue have our Government had with their US counterparts at all levels about how these delays might be overcome?

Lord Bethell (Con): My Lords, the noble Baroness is right to say that the Serum Institute of India is the world's biggest vaccine manufacturer by far and we are enormously grateful for the strong relationship that this country has with the institute and the contribution that it is making to our vaccine rollout. The supply chains for the world's vaccine production are unbelievably complicated, with ingredients and individual supply items coming from many different countries for each and every vaccine. It is not possible to provide a running commentary on the progress of each one; nor would it be wise to have a bilateral conversation with the country of origin of every vaccine ingredient. Our relations with India, America and the EU will, I am sure, return to the spirit of partnership and the respect of contract law that have characterised those relationships in the past.

Lord Cormack (Con): My Lords, I shall quote from the Statement:

"Last Monday, we reopened care homes to visitors, with a careful policy of a single regular visitor … we hear each day of more and more residents safely reunited with people they love."

My wife and I have a dear friend whose mother is 99. She is indeed excited at the prospect of holding her mother's hand for the first time in a year, but that excitement is overshadowed by the knowledge that several of the workers in the care home where her mother is being looked after have refused to take the vaccine. I urge my noble friend yet again to press forward on this.

Lord Bethell (Con): My Lords, I hear my noble friend's message loud and clear and he has made the case both persuasively and thoughtfully. He is a little ahead of events. It is not possible for us to put in any form of certification or mandation until the vaccine has been offered to absolutely everyone in the country. However, he will know that the Cabinet Office has a review process in place that is looking at exactly the dilemma he has spoken to.

Lord Singh of Wimbledon (CB) [V]: My Lords, I congratulate the Government on the success of their vaccination programme. We should also applaud the way that the NHS has responded to the pandemic in reorganising priorities and efficiently facilitating the vaccine rollout. Does the Minister agree that the controversially privatised NHS Supply Chain has done less well in the provision of PPE and that the Government's track and trace programme has also been found wanting? According to the National Audit Office, some of its consultants have been paid thousands of pounds a day for sitting at home with very little work.

Lord Bethell (Con): My Lords, I am grateful to the noble Lord for his tribute to the NHS, both the front-line staff and those who have organised the vaccine rollout. He is right to say that this has been a huge national achievement. However, I do not accept the characterisation he has made of other aspects of our pandemic response, including the provision of PPE, which, by the way, involved a huge global competition for extremely rare materials and led to a massive increase in domestic production. I also do not agree with his characterisation of the test and trace programme, which has developed into becoming one of the largest testing programmes in the world. It is now extremely effective, with tracing completion rates above 90%.

Baroness Andrews (Lab) [V]: My Lords, further to Minister's exchange with the noble Lord, Lord Forsyth, can he update the House on plans to increase the manufacture of vaccine in the UK and when and where that might happen?

Lord Bethell (Con): My Lords, I am not sure that I have at my fingertips the precise rollout plan for domestic manufacturing. All I can do is reassure the noble Baroness that we are exploring all options equally hard and are working 110% on every opportunity we have for delivering vaccines into the UK. I reassure the noble Baroness and all noble Lords in the Chamber that we are doing all we can and that at this stage we are hopeful and confident that the supply chain will deliver the vaccines we need in order to vaccinate all adults by the end of July.

Lord Haselhurst (Con) [V]: My Lords, as it may not be possible to maintain the remarkable number of vaccinations currently being achieved over the next

few weeks, and noting the pent-up desire of people for an overseas holiday, is the trickiest task now facing the Government not to persuade people to hold off a bit longer? There is still too great a risk of importing strains of Covid-19 and spoiling the progress that their sacrifice has achieved to date.

Lord Bethell (Con): My noble friend is entirely right: this is a considerable dilemma not just for the Government, but for everyone. We in the UK have an enormously valuable project in our vaccination programme. Who does not relish the potential freedom from this horrible disease that it gives us? Yet we need only look overseas to see infection rates rising and the variants of concern spreading. The bottom line is that we do not know the impact of the variants of concern on the vaccine. Anyone who says they do for sure is simply not representing the truth. We have to be patient and figure out and fully understand the threat from the variants of concern. When we have that information, we can make a pragmatic, sensible and informed decision on foreign travel, as the Prime Minister has promised.

Baroness Hollins (CB) [V]: My Lords, I am so pleased that all people with learning disabilities who are known to their GP are now in either group 4 or 6 for vaccination. Will the noble Lord commit to reporting on the take-up of Covid immunisation for people on the register, both nationally and locally? Will he also report on the implementation of visiting policies for people with learning disabilities in both supported living and residential settings, and whether those residents are able to choose their one visitor?

Lord Bethell (Con): Those were two extremely thoughtful and well-informed questions. I do not have the statistics at my fingertips, but I would be glad to go back to the department and write to the noble Baroness with the information she has asked for.

Lord Liddle (Lab) [V]: My Lords, I add my congratulations to the NHS on the tremendous success of this vaccination programme, but we should now be doing more to look forward to how we can address the social and public health inequalities that led to Britain having one of the largest death rates from Covid in the world. I speak in the context of being a Cumbria county councillor. The public health grant is what we use to tackle issues such as obesity, inactivity, smoking and alcohol, which greatly reduce people's chances of surviving deadly disease. Next year's public health grant is a mere £19 million—an increase of just 1.4%. Not only is this, frankly, a pathetic response to the social problems that led to all these Covid deaths, but it is unfairly distributed. Central London authorities such as Kensington and Chelsea, and Westminster, receive three to five times the amount per head that our authority in the north receives. How do the Government explain this and how does it square with their levelling-up agenda?

Lord Bethell (Con): My Lords, we are committed to both our levelling-up agenda and the kind of population health measures to which the noble Lord alludes. That is why we are bringing the NHS and social care Bill before the House later this year. I hope that the noble Lord engages with it to bring his insight to the debate.

Lord Dobbs (Con) [V]: My Lords, I assume that my noble friend shares with me a profound sadness at what is going on in the EU. Will he, instead of following their appalling example or indulging in tit for tat, remind the world that Britain after Brexit does things differently? We prefer the rule of law to knee-jerk protectionism, we pursue free and fair trade, and we honour our commercial contracts. Does he agree that this makes Britain one of the most attractive places in the world for pharma, biosciences and anyone to do business with?

Lord Bethell (Con): My noble friend has just made a fantastic pitch for my job. He articulated the case for investing in Britain to pharmaceutical and medical devices companies around the world. Which company cannot be looking at Europe, right now, wondering whether Britain is not, by far, the best destination for their investment and research? I completely agree with my noble friend; my head is in my hands when I look at Europe and what is going on there, but my hope is that good sense will return. In the meantime, if anyone wants to invest any money in life sciences, please give me a ring.

Lord Loomba (CB) [V]: My Lords, the vaccination milestone of 25 million in 100 days is commendable. However, we must be very careful that we do not undo or undermine our good work thus far. Will the Minister tell us why the Government do not consider it important—imperative, even—to ban all overseas holiday travel this summer, as many countries are now suffering from a third wave of Covid-19 due to new variants becoming apparent, and there is an increased risk of them being transferred to the UK via travellers?

Lord Bethell (Con): My Lords, the noble Lord puts the situation well. I do not agree with every aspect of his assessment, but his concerns are shared by the Government. We keep the whole situation under review, but the bottom line is that we do not know the impact of the variants of concern on the vaccine and vice versa. We keep the situation very closely monitored. The measures in place are entirely proportionate to the threat we face but, should that escalate, we will not hesitate to take the necessary decisions.

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, in commending the rollout of the vaccination programme, could the Minister indicate whether the Government have made arrangements for its continuation in subsequent years? What discussions have there been and potential arrangements made with the devolved Administrations on this?

Lord Bethell (Con): My Lords, we very much hope that the vaccination programme being delivered today will lead to an inflection point in the whole country's approach to vaccinations overall. That is not just for Covid, but for flu, HPV and other prophylactics. We are on the brink of a massive change in our mindset regarding preventive medicine. There is an opportunity

[Lord Bethell]
here for us to completely change the way in which we do healthcare—from an emphasis on late-stage and acute medicine to preventive early-stage medicine. The stakes are enormous. We are determined to grab this opportunity with both hands and we will take our friends in the devolved authorities with us.

The Deputy Speaker (Lord Haskel) (Lab): The noble Baroness, Lady Blackstone, and the noble Lord, Lord Lucas, have both withdrawn, so I call the noble Lord, Lord St John of Bletso.

Lord St John of Bletso (CB): My Lords, I would like to probe the Minister outside the question of the vaccine supply and its admirable rollout. While welcoming the Government's workplace testing scheme, in which lateral flow tests will be given to businesses until the end of June, what established workplace testing infrastructure is in place? What measures are being taken to ensure the high uptake of this strategy and that it is as safe and accurate as possible?

Lord Bethell (Con): The noble Lord is entirely right to emphasise this incredibly important aspect of our toolkit to manage infection rates down. The workplace is an area of infection threat and asymptomatic testing is a way to keep workplaces safe. We have put in place until the summer the free provision of lateral flow tests for those who wish to do workplace testing, and we are looking at ways in which we could potentially extend that, particularly in circumstances where the infection rate crept up again. We are working very closely with BEIS colleagues to look at the kind of regime that would be necessary. I pay tribute to DfT colleagues who have trail-blazed this area with the test to release programme, which uses private testing capacity for that important transport corridor, and to colleagues at UKAS who have put in place the accreditation necessary to create an independent, private ecology of the kind that the noble Lord refers to.

Lord Hunt of Kings Heath (Lab): My Lords, I come back to the point raised by the noble Lord, Lord Cormack: the SPI-M-O consensus statement of 24 February showed that while 95% of care home residents had had the vaccine, only 70% of staff had. We really must do better on this; does the Minister agree?

Lord Bethell (Con): My Lords, I could not agree more heartedly; the vaccination of staff is a massive priority. Those figures give us cause for some reflection on how we can increase them. The adoption rate of vaccines by all healthcare workers has been much more impressive than on previous vaccine rollouts, so we are encouraged overall, but we are determined to hammer out all the last rock pools where people have not been persuaded. As I alluded to my noble friend Lord Cormack, we are looking at all methods to make sure that we get there in the end.

Baroness McIntosh of Pickering (Con): I welcome the Statement, in particular the reference to the future discharge programme for hospitals. Does my noble friend agree that it is essential to rural-proof this policy? Will the Government look favourably on establishing health hubs in rural towns, to provide treatment and test availability and to allow the potential to avoid hospital visits?

Lord Bethell (Con): My noble friend hits the nail on the head; who could think that a return to the previous regime of turning up at a GP's surgery or a hospital every time you feel ill could possibly be a wise way of going about your healthcare system? Professor Sir Mike Richards has done an extremely good report on community health hubs, which we are looking at very closely; it has some very wise words that we are minded to follow up.

Baroness Uddin (Non-Afl) [V]: My Lords, I congratulate the Government on the rollout of the vaccine programme. I have two questions. First, what steps are being taken to ensure that local authorities are making progress to resume assessments of the needs of adults with learning disabilities and autism, many of whom were forced to depend on their inadequate amount of disability benefit? Secondly, what steps have been taken to speak to family members who lost loved ones with the instruction for staff not to resuscitate? I raise this point as I have raised it before. Will the Minister assure this House that the practice is no longer applicable to residents in care homes and people with learning disabilities, unless in agreement with patients and their families?

Lord Bethell (Con): My Lords, the CQC has pronounced its report on do not resuscitate orders, which is absolutely crystal clear. I wholly endorse its findings and recommendations.

Lord Moynihan (Con): My Lords, I warmly congratulate the Government on the management of the vaccine programme. As we emerge from the epidemic, will the Government commit to a major health policy initiative to ensure that all young people engage in a more active lifestyle, participate in sport and recreation, gain affordable access to gyms, swimming pools, leisure facilities and dual-use school facilities used by local communities, and to tackle what is the least fit generation of young people in over 100 years? Does my noble friend agree that affordability and access are the critical components in this context?

Lord Bethell (Con): My Lords, the policy on sports is best left to colleagues at the Department for Digital, Culture, Media and Sport, but on a personal level I emote complete sympathy with my noble friend's sentiments. I may be naive in this matter but I cannot help hoping that this pandemic will have led to a feeling across the country that the health of the nation has to change—it has to change emphatically, not only through diet but the amount of activity taken. This nation has an opportunity to embrace a lifestyle with more outdoor activity and exercise and a greater commitment to healthy living. That is a reasonable ambition, not just for my noble friend but for the whole country, and I support it entirely.

The Deputy Speaker (Lord Haskel) (Lab): My Lords, that completes the questions.

Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 7) Regulations 2021

Motion to Regret

3.25 pm

Moved by ***Baroness Thornton***

That, while welcoming the Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 7) Regulations 2021, this House regrets that they were not laid until 15 February despite the warning from the Scientific Advisory Group for Emergencies on 21 January that "reactive, geographically targeted" travel bans "cannot be relied upon to stop importation of new variants" of COVID-19; further regrets that Her Majesty's Government failed to prevent the Brazilian strain of COVID-19 entering the United Kingdom; further regrets that the policy only applies to 33 "red list" countries and that 99 per cent of passengers arriving in the United Kingdom are therefore exempt; and calls upon Her Majesty's Government to implement a comprehensive hotel quarantine on all United Kingdom arrivals to prevent the importation of new variants of COVID-19.

Relevant document: 46th Report from the Secondary Legislation Scrutiny Committee

Baroness Thornton (Lab): My Lords, I very much look forward to the maiden speech of my noble friend Lady Chapman, who I know will bring great experience and wisdom to the House.

This Motion is necessary because of the lack of parliamentary scrutiny and the inadequacy of the Government's policy for preventing the importation of new variants of Covid-19 from international travel. The Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 7) Regulations 2021 were made on 12 February—I think the Minister and I agree that it would be really helpful if the numbers of these statutory instruments were put on to the agenda by the House authorities—and came into force at 4 am on 15 February 2021 without any parliamentary scrutiny.

Although the Minister will be aware that the House is concerned about the use of the emergency "made affirmative" procedure for coronavirus regulations, in this instance the Government have gone one step further by using the "made negative" procedure to introduce the powers contained in these regulations, which requires a debate—a Motion to debate them at all. Frankly, there is no emergency here, just a lack of prompt decision-making over a year when the regulations could have been in place and could have been properly debated and scrutinised. Given that the regulations create a system of mandatory quarantine backed by criminal sanction, give the police power to enter people's houses and allow individuals to be detained, searched, and their belongings seized, these are not minor changes in the law and should not have been enacted without proper scrutiny.

Furthermore, the regulations were laid before Parliament fewer than three days before they came into force. This is a breach of parliamentary convention that a negative statutory instrument will not come into force until 21 calendar days after it has been laid. Laying these regulations under the emergency procedure at the supposedly eleventh hour, as so many other coronavirus regulations have been made, means that individuals and businesses affected by hotel quarantine had less than one working day to get to grips with the details of the scheme, raising several rule-of-law concerns surrounding the accessibility and foreseeability of the law. The Minister needs to explain to the House why these regulations were laid under the "made negative" procedure and the use of urgent powers.

I hope that the House will understand that we on these Benches do not oppose the introduction of hotel quarantine—quite the contrary—but that my Motion highlights serious concerns about the inadequacy of the scheme. Thousands of people are travelling from countries where South African or Brazilian variants of Covid-19 are circulating which are not on the Government's red list. These people—roughly 19 out of 20 passengers—will avoid hotels and are being asked to quarantine at home, and yet only three out of every 100 people are being checked to ensure that they are complying. Is that enough, given the serious threat?

So far, the South African variant of the virus is not spreading rapidly in Britain, with 351 known cases, but there are fears that this could change as lockdown is eased. Given that we understand that both variants have the potential to resist vaccination, the Government's failure to secure our borders risks jeopardising the fight against Covid-19 just at the moment when it looks like we are making significant process.

The Prime Minister has said in the last 24 hours that we

> "can see sadly there is a third wave under way. People in this country should be under no illusions that previous experience has taught us that when a wave hits our friends, it, I'm afraid, washes up on our shores as well."

So it is even more pressing, given Covid cases in many European countries and the inherent threat that this poses to the UK. Surely the Government's first priority must be protecting the progress that is being made by the vaccine. This means we need a comprehensive hotel quarantine system without delay.

In addition to concerns about intermingling in transit and people failing to self-isolate on arrival, there are also major concerns about the enforcement of the policy. There has been much discussion regarding the creation of new offences punishable with up to 10 years' imprisonment and £10,000 fixed penalty notices. As the Bingham Centre notes, the Government's messaging has been misleading, and misleading statements of the law undermine the rule of law by creating confusion about what the law is. The reality behind these bombastic policy headlines is that there is very little emphasis on compliance and enforcement.

The JCSI has drawn attention to the related Health Protection (Coronavirus, Pre-Departure Testing and Operator Liability) (England) (Amendment) Regulations 2021, which introduce requirements for the operators of commercial transport services to ensure that passengers travelling to England from outside the common travel area complete a passenger locator form and possess notification of a negative test result. However, the

[Baroness Thornton]
Committee found that operators are not required to verify that the reference number is real or valid, as real-time verification would impose a significant burden. The report stated that

"legislation is not the place for the expression of hopes and requests"—

it is an obligation.

These regulations are due to expire at the end of the month. Can the Minister confirm that they will be, at the very least, extended to give non-essential travel bans in the UK, and that those coming to the UK must self-isolate or quarantine? We agree that it is too early to say whether there should be any changes of travel advice on 17 May. I hope that the Minister can assure the House that the Government will be led by the science and will heed the advice of their advisers to move forward. I beg to move.

3.32 pm

Baroness Walmsley (LD) [V]: My Lords, the noble Baroness, Lady Thornton, raises several serious issues. She is right to criticise the delay in acting following scientific advice. Sadly, slowness to react has been a feature of this Government's handling of the pandemic and has probably contributed to the fact that we have almost the highest death rate of any country in the world. The fact that the regulations failed to prevent the Brazilian variant coming in indicates that they are ineffective, unmonitored and not supported.

It is illogical to force travellers coming directly from red-list countries to isolate in a hotel while allowing those from the same countries, via a short stop in a third country, to isolate at home. I have to accept that the only way to ensure that people do isolate is to ensure that they go into suitable accommodation, with proper support. Since the Government have not provided that, the very least that they should be doing is monitoring that those who are supposed to isolate at home are doing so—but microscopically little of that has been done. Why?

There is also the issue of support. No amount of pre-travel testing will get over the fact that many travellers, like others who are asked to self-isolate for other reasons, are not able to do so. The reasons are usually financial but may be caring responsibilities. These Benches have been calling for many months for paying people their wages to enable them to isolate, but our appeals have fallen on deaf ears. To get the benefit of the NHS vaccination programme, we must do more to prevent variants coming in. Will the Government now look carefully at the evidence from other countries that have put all travellers from abroad into isolation accommodation? It worked at the beginning of the pandemic, when passengers from a cruise ship with an outbreak were isolated in vacant nurses' accommodation on the Wirral. It could work now.

3.34 pm

Baroness Wheatcroft (CB) [V]: My Lords, if these regulations were intended to pull up the drawbridge and prevent new strains of Covid-19 entering the country, they fail. I support the arguments of the noble Baronesses, Lady Thornton and Lady Walmsley, on the inadequacy, and indeed inconsistencies, of these regulations. For a start, only those coming from red-list countries are forced to self-isolate in government-approved hotels, yet those arrivals inevitably will have travelled on the same flights as people coming from non-red-list countries, as direct flights are cancelled. Bugs do seem to circulate freely on aeroplanes, so can the Minister explain why those who may have been sitting for many hours in a crowded plane with a collection of potential Covid carriers are able to disembark and head straight on to public transport to go and quarantine in a place of their choosing? Indeed, can the Minister explain the logic of allowing any traveller who arrives in this country to travel on public transport, potentially on several different vehicles, before going into quarantine?

For those who do have to go into hotel quarantine, the rules are, rightly, very strict, but are the hotel workers who look after these people being properly protected? What are the risks of them contracting the virus and then spreading it into the community? Many hotel workers have several different jobs. Can the Minister assure us that this is not the case with those working in quarantine hotels?

Finally, perhaps I can ask the Minister a question on quarantine that I put before but which I think time prevented him from answering. If test and trace contacts an individual and instructs them to self-isolate, there can be a hefty fine for disobeying—but test and trace counts as having been contacted for this purpose all the individuals living at the same property as the person instructed to self-isolate. If these people fail to self-isolate, can they be fined?

3.37 pm

Baroness Altmann (Con) [V]: My Lords, I too regret the amendment to these regulations. Indeed, I regret these regulations, but for a rather different reason from that which has been expressed so far.

With huge respect to the noble Baronesses, Lady Thornton and Lady Wheatcroft, I say that it seems to me that we are trying to catch water in a sieve, and we may make the holes smaller, and we may reduce the number of holes, but water will still come through. Therefore, the Government must make reasonable judgments as to what they can reasonably achieve and what they will fail to achieve. To some degree, as I have said before, I fear that the Government have been bounced into trying to control something that they have not much chance of controlling.

There are exemptions to these rules, including seasonal agricultural workers, hauliers, diplomats, business travellers and people who go on the Tube after having flown. All of them are at risk of bringing in a new variant. It does not take more than one or two people bringing in the variant for it then to spread.

The vaccine programme is the way forward. I congratulate and commend the Government on the success of their extended vaccination programme and their speed in delivering vaccines, so that the vast majority of people whose lives have been at risk of the virus now have a significant degree of protection. Clearly, there may be new variants—but you could say that for ever, and when would this then end?

3.39 pm

Baroness Chapman of Darlington (Lab) (Maiden Speech): My Lords, I am grateful for the opportunity to make my maiden speech while the House is considering such important matters, and also for the very warm welcome I have received since being introduced.

I am sure that, like many others here, I never expected to be sitting on these red Benches. I grew up in Darlington with my parents and brother, and I have many of the same friends now that I had then—and it is fair to say that Darlington made me who I am. It is the birthplace of the railways and the home of the *Northern Echo* and pioneering bridge builders. It is an exceptional place and I was proud to represent it in the other place for almost 10 years. It is where my two sons, Ted and Dan, are getting towards the end of their school education, and where they will always be proud to say that they are from. The maternity unit where they were born still has consultant-led births, and Darlington Memorial Hospital still has its accident and emergency service, because of the campaigns that I led. Hundreds of Department for Education jobs remain in Darlington because of the argument I won with the Government. Darlington and the north-east is a great place to live, to grow up and to grow old.

However, like people in too many other towns, the people of Darlington chose to turn away from my party in 2019. The party of the NHS, the minimum wage and the Good Friday agreement was no longer speaking for the priorities of the women and men working in our towns. It was our greatest defeat since 1935. When this happens, a party cannot say, "What is wrong with the electorate?"; we must ask ourselves where we went wrong. I was glad to chair Keir Starmer's leadership campaign. He is a good leader, with integrity, compassion and experience, and he will make a great Prime Minister. He has built a good team of people, who have no airs and graces and who roll their sleeves up and get stuck in. The Labour Party's director of communications, Ben Nunn, was at ease knocking on doors in my home town in the freezing cold in 2019. He knows, as all of us in my party know, that we need to listen and to change if we are to win. The challenges of the gig economy, demographic change, the climate crisis and now pandemic disease must be faced by political leaders and the public together.

The Labour Party does not belong to interest groups or factions. It belongs to people like my parents, who worked their whole lives looking after others; like my fellow Labour fighter and husband Nick, who grew up in the Welsh valleys in a family of steelworkers and miners and who is, like me, Labour to his core; but also to people such as my brother Robert and my sister-in-law Alison, who runs her own business in the most difficult circumstances and who is not much interested in politics. It is their party too, and it will win again only when the British people see us as a party that is theirs, and one that will build a better future with them. We must give the Labour Party back to the people of Britain.

The last year has been extraordinary for all of us, but I am looking forward to being an active working Peer, and I am sure that I have much to learn about how this Chamber and its committees work. I am keen to understand what can be achieved through the winning of votes at this end of the Parliamentary Estate. I can promise that I will give it my all, and I look forward to working with all of you in the years to come.

3.43 pm

Lord Blunkett (Lab) [V]: My Lords, I am very proud to follow my noble friend and to offer her the warmest possible welcome to this House. I congratulate her not only on an excellent maiden speech but on the ability to get so much into such a short period. The time constraint has not prevented her presenting a picture of what has happened and what must happen in a way that I would have been proud to have delivered myself. I warmly welcome what she said and I hope that she will forgive me—because she spelled out why—for remarking that this is one of those very rare occasions when I can say that I wish that someone was not on our Benches but was instead down the Corridor. But I am very pleased that she is here and that she will make a continuing contribution, as she has described, to Labour taking its full place once again as the Government of our country.

I am diffident about the short time I have available, because my noble friend Lady Thornton was well ahead of me in understanding the extent of the impact of the virus over 12 months ago. I pay tribute to her for that. I agree entirely about process and procedure, but I share the concerns of the noble Baroness, Lady Altmann, about where we are going. As she rightly said, we have those delivering to all of us both essential goods and equipment across the country on a daily basis, and by necessity coming in to deliver what otherwise would not be possible. I simply put this on the table: if the vaccine is safe and successful—I believe that it is—and if the upgraded PCR tests are to be as successful as I know they will be, we will need to find new ways of being able to open our economy, to trade again, to keep people in jobs and to ensure that the economy of the future is secured.

The doom and gloom merchants must be very careful in what they say and how they say it in the months ahead because, quite honestly, enforcement is one thing but compliance is another, and we need the people of this country to feel optimism and hope, because the world is going to have to live with this virus—but live with it safely—for a long time to come.

3.46 pm

Baroness Miller of Chilthorne Domer (LD) [V]: My Lords, there is much to regret in the way that the Government have handled travel issues during this pandemic. First of all there was far too much travel. Now, with these regulations, there are still some really big loopholes. The guidance is unclear. People cannot travel for holidays: that much is clear. But they can travel for business. What actually constitutes business and what checks have been done on that? There have been plenty of reports of so-called influencers travelling for business to places such as Dubai because it is sunny. Does that qualify?

There is another very unequal bit of these regulations. The very wealthy may well have two passports and fly in their private jets. If you follow a flight tracker, you will see that plenty of private jets are still going to places such as Farnborough. What checks are done on

[Baroness Miller of Chilthorne Domer]
them? It would not really affect them hugely if they were fined, so what does the Minister intend to do about that? They are more likely to have been to many countries around the world as well.

I have one last point. Could the Minister give some guidance for those needing to travel for imperative family reasons? That has really been lacking. I am talking about family death or severe illness, for example. If your parent is at death's door—say with end-of-life cancer— you can hardly quarantine for 14 days before arriving at their bedside. It is obviously different if they have coronavirus. A clear statement is needed on what are imperative and humane reasons to travel in family situations. Could the Minister make one?

3.48 pm

Lord Robathan (Con): My Lords, may I first—unusually—pay tribute to my noble friend the Minister? At the weekend we had what I thought was a rather unpleasant article in the *Sunday Times* about hereditary Peers. Well, he is without doubt one of the most industrious and diligent Ministers in place and I think he justifies the presence of at least one hereditary Peer in this Chamber. Also, we agree entirely on the need for healthier lifestyles—referred to at the end of the previous business—and tackling obesity, which is closely linked with death rates in this pandemic.

I do not enjoy agreeing with the noble Baroness, Lady Thornton—she probably does not much enjoy me agreeing with her—but the lack of parliamentary scrutiny and the use of emergency procedures to bring in these draconian measures are frankly not acceptable in a democracy. It is a year since this started and we really should have sorted this out by now. Furthermore, perhaps I might say to my noble friend the Minister—in less congratulatory tones, although it is not necessarily his fault—that there is terrible confusion and inconsistency in these regulations. Can anybody be surprised that the public are confused? I am confused, and I think that Ministers are confused. Nobody is really sure about what country is on what list, and what countries they are allowed to visit.

I certainly regret these regulations, although I am not going to vote for the regret Motion. Furthermore, like my noble friend Lady Altmann, I fear that they are unlikely to make much difference to the spread of the virus.

The Deputy Speaker (Lord Haskel) (Lab): The noble Lord, Lord Bilimoria, has withdrawn so I call the noble Lord, Lord Empey.

3.50 pm

Lord Empey (UUP) [V]: My Lords, like other speakers, including the noble Baroness, Lady Altmann, and the noble Lord, Lord Blunkett, I have concerns about effectiveness. There has been talk of some kind of vaccination passport, but we must remember that the aviation sector is a hugely important business for this country and it is being systematically ruined by these events. The Government have helped with furlough and there has been a modest contribution to airports through rate relief, but the costs involved in restarting and running airlines from the present situation will be a massive undertaking. If we keep our airlines grounded for much longer, while our competitors—particularly China—are able to scoop up perhaps substantial shareholdings in some of them, I fear that the risk to the aviation sector in the United Kingdom will be very considerable.

I understand what the Government are trying to achieve but, given the volume of people who come into this country by necessity to deliver supplies and so on, we have to make sure that what we do is proportionate. I therefore suggest that we pursue the passport issues and simultaneously look at a rescue package for aviation, because that is what it will require.

I also take the opportunity to congratulate the noble Baroness, Lady Chapman, on her maiden speech; it was an excellent first speech in this House. We all look forward to meeting and working with her in the future.

3.52 pm

Lord Bourne of Aberystwyth (Con) [V]: My Lords, it is a great pleasure to follow the noble Lord, Lord Empey, who has characteristically made some important points. I too congratulate the noble Baroness, Lady Chapman of Darlington, on an excellent maiden speech. I am sure that the whole House looks forward to many more such speeches from her. I also thank the Minister for his considerable efforts on coronavirus and many other health issues over the last year or so. He has been a truly diligent Minister.

We can all take great comfort from the success of the vaccination programme. It is a tribute to the Government, the NHS and the hundreds of thousands of volunteers who have made such a great effort and continue to do so. That said, these regulations cause concern. I share the concerns of many Members who have spoken about the lack of notice, which we should have been able to deal with by now. We have heard routinely how this will be dealt with but we are still seeing these things in the rear-view mirror. Frankly, I cannot see a reason why that should be happening now, and certainly not in relation to these regulations. I do, and will, support them, but there are inconsistencies in the approach. Those coming directly from a red-list country will quarantine in a hotel; those coming indirectly—no matter how short the stopover somewhere else—will not be required to do so. I cannot see the reason for the distinction but I look forward to hearing from the Minister on this.

Meanwhile, we should take great comfort internationally from the scientific response—including, I hope, to the variants—from those who have worked incredibly hard on the vaccine programme and, as I said, from the vaccine rollout in our own country, which has been extraordinarily successful. I would also like to hear from the Minister on the vaccine passport and, indeed, a vaccine certificate to enable people to attend galleries, concerts, football matches and so on. What are the Government doing about that?

3.54 pm

Baroness Jones of Moulsecoomb (GP): My Lords, I offer a very warm welcome to the noble Baroness, Lady Chapman of Darlington, and hope to work with her cross-party. I suspect that we will hear a lot more about Darlington than we ever have before.

I wholeheartedly support the regret Motion in the name of the noble Baroness, Lady Thornton; I only wish we could do something stronger. A year into the pandemic, it is only now that the Government have started implementing any kind of rigorous quarantine measures for international travellers. It is a little over a year since Boris Johnson was boasting of shaking hands with everybody and of how Britain would be open for business. How things have changed, yet the Government have been consistent in their failure to restrict the international spread of the virus. First, restrictions were called ineffective and unnecessary, then the Government advised against unnecessary international travel because of the risk of other countries implementing travel restrictions while abroad. After that, of course, it was too late as the virus was already running rampant.

What has most annoyed me is that all this seems to stem from a wider obsession with unfettered international air travel. We have gone in such a short time from air travel being an almost unaffordable luxury to it becoming so embedded in our way of life that we allow air passengers to spread the virus all around the world and trash our climate at the same time. It is about time the Government took a deep look at their obsession with air travel and realised just how much harm it is causing to the planet and to the future of humanity.

The Deputy Speaker (Lord Haskel) (Lab): The noble Baroness, Lady Donaghy, has withdrawn so I call the noble Lord, Lord Addington.

3.56 pm

Lord Addington (LD): My Lords, I totally agree with the initial thoughts of the noble Baroness, Lady Thornton. She described this as a rear-view mirror approach to legislation and that has caught it absolutely squarely. As a fellow person on the front of the *Sunday Times*, I do not think the Minister should take this personally. He is now representing a Government who have consistently got this wrong. There is confusion throughout the system. We do not know where you should go or what happens when you come back, or what will happen if you go somewhere and break the rules. My noble friend Lady Walmsley described how people are breaking rules because they cannot afford not to do so. This is a degree of confusion. I hope the Minister will take the message back to the Government that we have had enough.

The Motion today is justified—as would be a vote. I hope that the Minister can give us a clear understanding of the Government's thinking. At the moment it seems to be a series of reactions based on almost nothing. The noble Baroness, Lady Altmann, got it right when she described a sieve letting water through. If we are to have a sieve, let us block up as many holes as possible or do away with it altogether; I think blocking up the holes is the way forward.

Lastly, on another point that has been made, if we are to have some form of vaccination passport to allow some activities, when will we hear about it? Many activities, including certain types of sport, will depend on it. I look forward to hearing what the Minister has to say.

3.58 pm

Baroness Meacher (CB) [V]: My Lords, I add my welcome to the noble Baroness, Lady Chapman, and I enjoyed her speech. We know that our failure to secure our borders at the start of this pandemic led to considerable numbers of tourists coming back from their skiing holidays—in Italy in particular but also elsewhere—and not isolating. Those tourists, I would say, substantially led to the soaring Covid numbers a year ago. We now have a list of 33 countries on the red-list travel ban, which reads a bit like a list of developing nations. Again, surely the greatest risk is from people returning from our neighbouring countries in Europe such as France and Germany, where, as I understand it, the South African variant is taking hold. Are the Government urgently considering including our European neighbours on the red list to avoid repeating our mistakes of a year ago or, indeed, going rather further as the noble Baroness, Lady Wheatcroft, and others have suggested? It seems to me that, if we want to lead a more normal life through the summer and onwards, securing our borders much more effectively than this regulation will do is going to be absolutely critical. I look forward to the Minister's response to that point.

4 pm

Lord Dodds of Duncairn (DUP) [V]: My Lords, I congratulate the noble Baroness, Lady Chapman, on her maiden speech and I wish her well for her future in the House.

I have considerable sympathy with the noble Baroness, Lady Thornton, over the use of the urgent powers procedures in relation to these regulations. However, I want to deal with some substantive issues around the regulations and the common travel area. I would be grateful if the Minister could set out clearly how international visitors from high-risk countries are monitored after crossing from the Irish Republic into Northern Ireland and then into England or other parts of the UK, because at present there is a major loophole.

There has been an ongoing problem with getting the necessary information and data from the Irish Republic authorities. The Northern Ireland Executive and our local Health Minister have been calling for that information to be shared from passenger locator forms in the Irish Republic, with little or no progress so far. It is imperative that the Dublin Government act on this, otherwise there is a massive problem. They should have done so months ago and we were assured that that would happen, but it has not yet occurred.

Passenger locator form information needs to be shared between the Irish Republic and the UK authorities, especially in Northern Ireland. That issue has been raised bilaterally, as I have said, but it needs to be resolved as a matter of urgency. Arguments have been made concerning problems with data sharing and that legislation may be needed, but we cannot afford to waste any more time, given the urgency of the problems concerning the spread of Covid through international travel.

Can we have a collaborative approach? Will the Minister urge information-sharing with the Irish Republic and vice versa? Can he speak to colleagues in government

[Lord Dodds of Duncairn]
to ensure that support is given to the Northern Ireland Executive in trying to extract this vital information? Information and data are shared fairly regularly on a whole host of issues to do with security and immigration for dealing with the common travel area, and it needs to happen in relation to Covid. It really is a matter of life and death.

4.02 pm

Lord Hunt of Kings Heath (Lab): My Lords, I echo the congratulations to my noble friend Lady Chapman on her excellent maiden speech. I agree that my party has hard lessons to learn.

I am going to have to agree with the noble Lord, Lord Robathan, when it comes to the issue of parliamentary scrutiny. That is twice that we have agreed with each other in the last three weeks, which is deeply worrying.

I want to reflect on the trenchant comments of the Secondary Legislation Scrutiny Committee. The SI that we are debating today has already been updated, as I understand it, by the amending Covid travel regulations Nos. 8 and 9. The Explanatory Memorandum provided with regulations No. 8, which we have yet to debate, was particularly poor, says the committee, and the DfT had to replace it immediately. As the committee says, when instruments are brought into effect immediately, it is even more important that their intent and effect be made clear to both Parliament and the public.

One would have thought that the lesson would have been learned but, according to the scrutiny committee, it has not. Regarding regulations No. 9, which we anticipate debating fairly shortly, it says:

"The Explanatory Memorandum was particularly thin … and the supplementary information provided remained opaque."

The committee draws those regulations to the special attention of the House on the grounds that

"the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument's policy objective and intended implementation."

I am of course aware of the huge pressure on Ministers and their officials at the moment, and I support my noble friend in wanting a quicker and tougher approach to travel rules and quarantine. However—and this is the point that the noble Lord, Lord Robathan, was making—I also accept that we are putting severe restrictions on people's personal liberties, and that is something that cannot be swept away. It is unacceptable if departments cannot even provide clear statements in Explanatory Memorandums of what the regulations are about.

4.04 pm

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, I congratulate the noble Baroness, Lady Chapman, on her maiden speech. We worked together in the other place when we were Members there, so I look forward to working with her in this House.

I support the Motion in the name of the noble Baroness, Lady Thornton. The regulations should have been laid earlier, despite the warning from the Scientific Advisory Group for Emergencies on 21 January that:

"Reactive, geographically targeted travel bans cannot be relied upon to stop importation of new variants"

of Covid-19. Why was this the case? Why are we dealing with this legislation in retrospect? In fact, the noble Lord, Lord Hunt, has referred to the subsequent regulations, which we will no doubt debate in future weeks.

There is a view that the Government failed to prevent the Brazilian strain of Covid-19 entering the UK, that the policy applies only to the 33 red-list countries and that 99% of passengers arriving in the UK are therefore exempt. So, could the Minister indicate what action the Government will take to ensure comprehensive hotel quarantine for all UK arrivals in order to prevent the importation of new variants of Covid-19? Is there not an onus of legal responsibility on the Government to ensure the public health protection of all our citizens? In asking that question, I do commend the Government on the rollout of the vaccination programme.

There is also a view that under these new regulations, a passenger could avoid their managed quarantine by separating the legs of their journey. Is there not a case for the Government to review their hotel quarantine policy to make it fit for purpose?

The Deputy Speaker (Lord Russell of Liverpool) (CB): The noble Lord, Lord Randall of Uxbridge, has withdrawn, so I call the noble Lord, Lord Bhatia.

4.07 pm

Lord Bhatia (Non-Afl) [V]: My Lords, this SI has been prepared by the DHSC. It amends the Health Protection (Coronavirus, International Travel) (England) Regulations in order to introduce a new system. First, it addresses quarantine for travellers who have been in one of the designated registered countries that pose a high risk to the UK of the importation of a variant of concern in the 10 days prior to arrival in England. Secondly, it will make mandatory testing for all travellers who have been outside the common travel area in the 10 days prior to travelling to England. These measures are designed to reduce the public health risk caused by the spread from international travellers of a severe respiratory syndrome, coronavirus, which causes the disease Covid-19, particularly with respect to the possibility of a variant of concern being imported to the UK. The regulations came into force on 15 February 2021. This instrument applies in England and Wales.

That is the correct way to deal with the variants that have emerged from South Africa and other countries. We all must appreciate the speed with which the Government have enacted these regulations.

4.08 pm

Baroness Scott of Needham Market (LD) [V]: My Lords, the noble Baroness, Lady Thornton, has already mentioned the Joint Committee on Statutory Instruments. I have served on that committee for about two years now. It is one of the less well-known workhorses of the parliamentary scrutiny system. It is very technical in nature and staffed by a very effective and thorough legal team. It is always a busy committee but recent years have been particularly active, with the continued

volume of EU exit SIs and those, such as the measure today, relating to the pandemic. When you strip away all the legal technicalities, at root the committee is concerned to see that the law is correctly applied and that agreed parliamentary procedure is adhered to.

This SI and others like it are a very good example of the kind of issues that the committee highlights because it is rather exercised by them. In this case, "variant of concern" and "variant under investigation" are used but with no definition or meaning. The department has said that they do not need to be defined here because they have a commonly understood meaning in the scientific and health community. In practice, that may be true but there is an important point here: the law should be unambiguous and understandable to everyone. There are other examples where the department has included a definition, so it is not even being consistent.

Secondly, without going into the detail of our report there are drafting errors, which the department acknowledges. Three of them have had to be corrected by a subsequent instrument and the fourth, it says, will be. This is not a criticism of the department—drafting at pace is challenging—but it highlights how hard it is to keep track of exactly what Parliament is passing.

The committee has concerns about many trends and will shortly produce a special report which highlights them. The conflation of statute and guidance has exercised the committee and other noble Lords. This, compounded with the practice of government announcements and their attendant publicity, followed by regulation that does not match, is a major concern.

The Deputy Speaker (Lord Russell of Liverpool) (CB): The noble Lord, Lord Desai, has withdrawn so I call the next speaker: the noble Lord, Lord Naseby.

4.10 pm

Lord Naseby (Con) [V]: My Lords, I thank my noble friend on the Front Bench—my goodness, he has broad shoulders—and I warmly support the action he is taking and this SI. I have a couple of questions and concerns.

The first is about the designated entry points. It is obviously easy to do this with flights that come in direct but what about other routes? I have in mind Scotland; I am not sure what is happening there. It is pretty easy to fly into Edinburgh or Glasgow and get across the border. My noble friend from Northern Ireland raised the point that there is not really a border between north and south there. The noble Baroness, Lady Meacher, raised a question about Europe, particularly the areas that are entering the third version of the pandemic. Are they on the red list or not? Secondly, why is it taking quite so long to process people at London airports? The traffic levels are about 25% of normal, yet I was told by somebody last week that it is taking five to seven hours to be processed. There is much talk that they are understaffed.

On paragraph 6.2 of the Explanatory Memorandum, is the passenger locator form working smoothly now? I am not clear about UK nationals coming back from the red zone. Can they isolate at home? I congratulate my noble friend: having had to isolate and caught Covid, I was checked up on by the trace people and by the local authority.

I see that the expiry date for these provisions in 8 June. If they have to be renewed, when will that be?

Finally, I have a question about asylum seekers coming through the red zone. They will not have the resources to pay for a hotel if they are put in one, so how will they be handled? Absolutely finally, the vaccine passport is vital.

4.12 pm

Baroness Uddin (Non-Afl): My Lords, I send the noble Baroness, Lady Chapman, my warmest congratulations. She lends weight and strengthens the unacceptably low number of women in this House. I welcome her and look forward to working with her.

I echo the words of my noble friend Lord Hunt about the implementation of these regulations. The pandemic has touched all our lives in every way, with so many losing their loved ones and their livelihood. We as citizens have sacrificed many civil liberties in accepting these regulations and others in our country, where we have professed freedom. None of the progress that we have achieved so far in reducing the infection through the vaccination programme should be jeopardised in easing further lockdowns, and our population should be protected in decision-making about travel.

Travel is more than family time, togetherness and pleasure; it is also about human reasons, as suggested earlier by the noble Baroness, Lady Miller. It is also critical to our businesses in transiting to building a post-Covid world. Safe travel is part of making sure that stability is attainable but it must be measured and phased, given what the scientists have repeatedly indicated: it requires five to six weeks after lowering infections for us to know what is actually going on, and to plan ahead to reflect this when easing a lockdown.

There should be clarity in the messaging about next summer; the public deserve that. Last night I heard through the grapevine that the Brazilian variant may have been taken to Bangladesh by individuals who have travelled from our shores. Can the Minister assure the House that those who are quarantined are being monitored by our test and track system?

4.15 pm

Lord Rooker (Lab) [V]: My Lords, I will be incredibly brief. I congratulate my noble friend Lady Chapman on her maiden speech. The Minister has been asked a lot of questions about these issues, now and previously, so I assume that statistics are being collected. How many unoccupied young people have arrived from red-list countries since the imposition of the regulations? How many private aircraft have arrived from red-list countries? I am not clear whether private aircraft can use all five airports or are restricted to one. What statistics are being kept on this? It has been alluded to as though it is not a problem.

If people come in from red-list countries via indirect means, presumably there are some statistics on that. The Explanatory Memorandum is massive, which shows the issue we are dealing with here. I have some sympathy

[LORD ROOKER]
with the Minister in that respect, I might add. But just how many people are trying to circumvent the system by coming via indirect countries? Presumably these statistics are being collected because we will need that evidence when we look at further regulations, which are inevitably bound to arise.

4.17 pm

Baroness Brinton (LD) [V]: My Lords, from these Benches I congratulate the noble Baroness, Lady Chapman, on her maiden speech and welcome her to this House. Once again, we are debating these measures, which have a significant impact on the liberty of individuals, a full five weeks after they came into effect. In your Lordships' House, we have been challenging the Minister and his predecessor about enhanced passenger testing, travel arrangements and hotel quarantine consistently since January last year. Well over a year on into this pandemic, the Government can no longer credibly cite a "public health emergency" for lack of scrutiny. This is not a surprise or an emergency, and from these Benches we too ask why a negative instrument has been used.

Ministers should look to other countries around the world for examples of what we should be doing regarding international travel, testing and quarantine. Other island nations have had great success with border controls, and we must learn from their successes. In Taiwan, a country I know is close to the heart of the Minister, they have "hot taxis" which are used only to take international arrivals to their place of quarantine. The drivers are paid a full day's wage even if they have no passengers, so there is no incentive for them to take other clients. Other support includes calling people every day to check they are okay and do not need medication or other urgent supplies, and to use their phones as an electronic tag to ensure that they do not leave the facility or their home. These are only some of a series of effective safety and support measures that Taiwan uses to ensure exceptionally strong quarantine compliance. In the UK, however, there is evidence of woefully poor checks on those quarantining.

In New Zealand, everyone must obtain a travel voucher which allows access to a state-run isolation facility, and where you go depends on your symptoms and test results. The evidence from countries such as Taiwan and New Zealand is clear; the UK Government's policy is not. We need to remember that only a few weeks ago Public Health England was scrambling to try to trace an unknown individual who had brought the Brazilian variant into this country. This was after these regulations came into effect. It is evident that, even with the regulations, there are huge gaps in the system.

Dr Susan Hopkins of Public Health England said at the time that the team trying to track down the mystery person included those from laboratories, logistics and data analytics and that they all had virtually no information to go on. Any effective system needs to know exactly who is coming into the country, where they are isolating and what their test status is.

It beggars belief that there was no link between testing and people quarantining, and worse, no system to ensure that anyone taking a test could be tracked back to where the tests were sent. We cannot have situations where public health officials are trying to track down cases that should be known with very little information to go on. Can the Minister assure your Lordships' House that both these loopholes are now closed?

It is inevitable that these restrictions significantly impact on people's liberties. At the moment, we have the worst of both worlds: some restrictions on liberties, but also far too many half-measures that see international arrivals jumping on to public transport, or worse, coming via another country to hide that they have come from a red list country—while many others have to pay thousands for quarantine hotels. Such a chaotic system undermines public trust and makes people wonder what they are making their sacrifices for. Will the Government put clarity and consistency at the heart of further reforms for travel restrictions and quarantine? On 21 January this year, SAGE advised the Government:

> "No intervention, other than a complete, pre-emptive closure of borders, or the mandatory quarantine of all visitors upon arrival in designated facilities, irrespective of testing history, can get close to fully prevent the importation of cases or new variants".

When will the Government implement this unequivocal advice in full?

Finally, when we talk about quarantine, we must always think about what might motivate individuals to break that quarantine. We know that the £10,000 fine is a strong deterrent. We also know that most people want to do the right thing. Not for the first, or even the second time, I ask the Minister: how are the Government supporting people in quarantine? How are they dealing with exceptional circumstances, such as allowing individuals to break quarantine to visit dying relatives, as set out by my noble friend Lady Miller? Can quarantining people get supplies, especially medication, delivered to them? Is it true that people with coeliac disease are not permitted to travel into the UK at the moment because quarantine hotels say they cannot cater for gluten-free people?

We all know border controls are important due to the threat of new variants. We cannot allow the hard efforts of our vaccination programme to be undermined by importing vaccine-resistant variants. This means working with scientists, medical professionals and Governments across the globe to ensure that research and information can be shared in as collaborative a way as possible to combat this global crisis. Above all, we must have effective travel restrictions and quarantine so that neither people nor the virus can get round them.

4.23 pm

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord Bethell) (Con): I start by saying a profound thank you to the noble Baroness, Lady Thornton, for this regret Motion. If is not often a Minister thanks the Opposition for a regret Motion, but I completely recognise that this is one of the top questions of the moment. I value the opportunity to air these important issues and to try to answer some of the probing and challenging questions asked in this debate.

Several noble Lords, including the noble Baroness, Lady Brinton, have called for clarity. I am afraid that clarity is the one thing I cannot bring noble Lords in this instance because there are so many unknowns about the virus itself. I am not trying to hide behind

the vagaries of the virus, but it is an unavoidable truth that we do not know about the body's response to the new variants that have emerged.

We do not know whether the Manaus or South African variants of concern will somehow evade and escape the AstraZeneca, Pfizer or Moderna vaccines and dramatically increase the severity of disease, hospitalisation and death rates in those who have been vaccinated. A small change in some of those percentages can make a dramatic difference to the impact of the disease on this country and other countries.

Therefore, while we wait for the evidence to become clearer and more conclusive, we have to balance. On the one hand, there is the very natural, reasonable and pragmatic instinct to pull up the drawbridge and use our island status to protect ourselves from the unknown, to ape the precedent set by Singapore, Iceland, New Zealand, Australia and Taiwan—other island states that have extremely strict green zone measures in place to keep out travellers. On the other hand, there is accommodating the very reasonable, natural and human desire of the British public and those who live overseas to travel in and out of the country. It is a matter of national identity, economic value and diplomatic heft that we keep our borders open during this period.

Under these circumstances, in a difficult, unknown situation, we have sought to put in the most thoughtful and balanced system possible. We have embraced a 21st-century approach to a 21st-century pandemic. That means we have used technology, testing and all the data systems available to us to ensure that we know exactly who is coming in and going out of the country. We are using that investment to protect the massive national project of the vaccine.

From a standing start, we have created an incredibly complex managed quarantine system that tracks everyone coming into the country, identifies two tests for them at two and eight days, double-tests any positives against genomic sequencing, and immediately applies rigorous tracing protocols to all those who may have a variant of concern.

The statistics speak for themselves; it has been enormously successful. Unlike other countries, where the South African variant, for instance, has been transmitted in the community, in the UK we have kept a lid on the Brazilian and South African variants. I speak with hope and prayers that that long continues.

The amount of travel coming into the country is now 5% of what it was in normal times. For those who say we are not doing enough, I remind them that we have taken an absolutely draconian approach to travel. For those who say that the arrangements are not clear, as my noble friend Lord Robathan did, I will be honest—I think the rules are very clear: it is illegal to travel abroad for leisure purposes. We even have a declaration form on international travel to ensure that people travel abroad only for permitted purposes. It could not be clearer.

It is possible that we will have to go further. We are watching with enormous sadness our European neighbours rejecting the vaccine policy. They are not embracing the opportunity a vaccine provides for driving down infection rates and protecting their populations. I do not know how that will play out. It is certainly above my pay grade to speculate. But we are all aware of the possibility that we will have to red-list all our European neighbours.

That would be done with huge regret because we are a trading nation, we work in partnership with other countries and we depend on other countries for essential supplies—not only medicines but food and others. Although we could put a haulier programme in place to protect our trade routes, it would be an enormous diplomatic blow and a decision that we would take with huge regret.

That is the reason for the system that we have in place at the moment. We have 35 red-listed countries, and we look at the statistics on the spread of variants of concern extremely closely indeed. We have some of the country's best analysts working through all sorts of intelligence routes to understand exactly what is going on in the world, and we have mobilised the largest genomic sequencing resources in the world, not only to understand what the prevalence is of VOCs in this country but to look at samples from all around the world. We are absolutely on the balls of our feet, should the situation change. That practical approach entirely suits the style of this country and the challenge that we face. The Prime Minister has made it crystal clear that, should the circumstances change, for the worse or the better, we will either upgrade or downgrade those arrangements.

A number of Peers have referred to the circumstances in which these regulations were put in place. I have been at the Dispatch Box enough times over the last year to understand the difference between a pressing situation and one that is not. I reassure noble Lords that these regulations were brought on to the statute book at pace because we had absolutely no choice. I remind those whose memories are short that it was only 12 weeks ago that the threat of the Kent variant became so apparent that we had to bring in new lockdown measures on 14 December. It is only relatively recently that we have understood more fully the potential threat to the vaccine of the Manaus and South African variants. In fact, in both cases, the evidence either way is not yet conclusive.

We are dealing with a fast-changing situation, and we have extremely worrying epidemiological updates from South America that suggest that there may be other variants out there that we have not yet sequenced. As such, we brought in these regulations at pace, with regret that they were brought in late. I reassure noble Lords that we would not have done it otherwise.

I give major thanks to the Joint Committee on Statutory Instruments for its report into the Health Protection (Coronavirus, International Travel) (England) (Amendment) (No. 7) Regulations 2021. I reassure the noble Baroness, Lady Scott—whose remarks were extremely well made and very generously made, under the circumstances—that the drafting errors referred to in paragraph 7.3 of the report have all subsequently been corrected. The use of the term "variant of concern" in the regulations is being reviewed as a matter of priority.

To the noble Lord, Lord Empey, I say that we have given £7 billion of government support to the air transport sector, but we completely appreciate the

[LORD BETHELL]
pressure that it is under. I reassure the noble Lord, Lord Dodds, that we absolutely have a collaborative approach with the Irish Government; there are no issues of principle here, and we have a pragmatic approach to sharing data.

I draw the attention of the noble Lord, Lord Addington, my noble friend Lord Bourne and others who asked about the passport to the Cabinet Office reviews of certification. There is one on major events, one on social care and healthcare, and one on international travel, with the DfT. They are all looking to report very soon.

There was unanimous support across the Chamber with regard to the maiden speech of the noble Baroness, Lady Chapman of Darlington, who spoke so warmly and generously, and she is clearly going to be a very benign and generous addition to these Benches. We really appreciate the way in which she gave her maiden speech. She spoke particularly kindly of Darlington. I note that the Treasury has made a massive commitment to move Treasury North there, which I hope the noble Baroness welcomes. I hope that she will enjoy the opportunity to spend more time with the Chancellor in the months and years to come.

I repeat my sincere gratitude to the noble Baroness, Lady Thornton, for bringing this regret Motion; it is a major and important issue, and one that we will debate again in the future because the issues that we are tackling this afternoon will not go away any time soon. I reassure all noble Lords that we take this matter extremely seriously indeed, and we are absolutely doing our best.

4.34 pm

Baroness Thornton (Lab): I am assuming that the Minister is asking me to withdraw my Motion, albeit in a very kind way. I first say how much I enjoyed my noble friend's maiden speech and how pleased I am to see her here, even if she cannot be down the other end of the corridor.

Given the support of the noble Lord, Lord Robathan, I cannot decide whether my noble friend Lord Hunt and I are more or less concerned, but I am always happy to accept support from wherever it comes. I am grateful—mostly—for all the contributions that noble Lords have made, and I thank the Minister for answering the questions with such detail and diligence. I thank my noble friends Lord Hunt and Lord Blunkett, who raised important and relevant questions, and pointed to the inconsistencies.

I am of course going to withdraw this regret Motion, but I need to put the Minister on notice. Statutory instruments No. 8, No. 9 and No. 10 are already down, and I think that we can expect No. 11 by the end of this week. I may not be quite so generous next time, because the only way that we can discuss these SIs is if someone in this House puts down a regret or take-note Motion. I am perfectly happy to accept that responsibility, but I might not be quite so generous as to withdraw it. I beg leave to withdraw the Motion.

Motion withdrawn.

The Deputy Speaker (Lord Russell of Liverpool) (CB): We will move straight on to the next business, with a few minutes' break to allow people to leave and arrive.

Direct Payments to Farmers (Reductions and Simplifications) (England) (Amendment) Regulations 2021

Motion to Approve

4.37 pm

Moved by ***Lord Gardiner of Kimble***

That the draft Regulations laid before the House on 24 February be approved.

Relevant document: 48th Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, I declare my farming interests, as set out in the register. As the matters in these two instruments are closely related, I hope that it would be helpful to your Lordships to consider them together. Made using powers under the Agriculture Act 2020, they implement important aspects of our new agricultural policy, set out in the agricultural transition plan published in November 2020. Both instruments apply only to England.

I turn first to the Direct Payments to Farmers (Reductions and Simplifications) (England) (Amendment) Regulations 2021, which sets reductions that will be applied to direct payments made to farmers for the 2021 claim year. The Government are committed to phasing out direct payments that are poorly targeted and offer poor value for money. This will be done over a seven-year agricultural transition period, and it will free up money to fund a new system of paying farmers and land managers for delivering public goods. This includes paying farmers to improve the environment, improve animal health and welfare, and reduce carbon emissions. All funding released from these reductions will be reinvested into new schemes in this Parliament. Help will be offered to those who need it to plan and manage their businesses through the transition.

The reductions will be applied in a fair way, with higher reductions initially applied to amounts in higher payment bands. The reductions for the 2021 scheme are modest, at 5% for around 80% of farmers. This is within the margin of the currency rate changes often experienced in previous regimes. We first published these reductions in 2018, so farmers have had time to prepare.

The Government are on track to introduce new schemes this year, while continuing to fund new and existing countryside stewardship agreements. From this year, farmers will be able to apply for grants under the farming investment fund to help them invest in equipment and technology and boost their productivity. This year, we will also begin the sustainable farming incentive, the first of our pilots under the environmental land management national pilot scheme. Payments to

the first pilot participants will be made before the end of the year, before the scheme is rolled out more widely from 2022. These will be funded from the reductions to direct payments. The instrument also makes minor amendments to reflect the fact that direct payments will be calculated in sterling rather than euros from the 2021 claim year onwards.

The instrument also amends the direct payments rules to remove the euro thresholds below which the Rural Payments Agency does not need to recover overpayments or payment entitlements, or charge interest. When deciding whether recoveries should be made, the Rural Payments Agency will apply the principles in the Treasury's *Managing Public Money* guidance.

Finally, this instrument makes two consequential amendments which were not covered in the Direct Payments to Farmers and Cross-Compliance (Simplifications) (England) (Amendment) Regulations 2020. It removes a redundant cross-reference relating to the greening rules which were removed by that previous instrument. It also changes a percentage figure used to calculate young farmer payments, ensuring the value of these payments will not be affected by the removal of the greening payment.

The Agriculture (Financial Assistance) Regulations 2021 put in place financial data publication and enforcement and monitoring requirements for four financial assistance schemes: Countryside Stewardship, the Farming Investment Fund, the environmental land management national pilot scheme, and the tree health pilot. All these schemes are established under the Agriculture Act 2020. The environmental land management pilot scheme will comprise three schemes, the first being the sustainable farming incentive.

This instrument will provide a critical opportunity to test, refine and develop environmental land management and tree health schemes in pilot form, ahead of their full launch. Countryside Stewardship will be a simplified version of the EU countryside stewardship and environmental stewardship schemes, and a further iteration of the domestic scheme, which opened for applications in 2020 and 2021. I say for the sake of clarity that this instrument provides for rules applying to schemes opened under domestic legislation, while earlier countryside stewardship and environmental stewardship agreements remain subject to enforcement and monitoring under CAP rules. The Farming Investment Fund will provide grants to farmers, foresters and growers so they can invest in equipment, technology and infrastructure to help their businesses prosper while improving resource efficiency and enhancing the environment.

This instrument will require information about financial assistance given under these schemes to be published, consistent with the Government's commitment to transparency in the use of public funds. Information published will include the total or aggregated payment received by a beneficiary for each scheme they are in and a description of activities financed by the payment, and could enable public analysis; for example, university research. Publication of personal data will not be required for payments below a de minimis level or in respect of payments made under the tree health pilot, where, instead, aggregated data will be published.

In terms of checks, enforcement and monitoring, this instrument provides for a flexible and proportionate framework ensuring that the purposes of schemes are delivered. Provisions include checking eligibility criteria at application stage and monitoring compliance with individual grant agreements and scheme conditions. A range of enforcement options are available under the instrument in the event of a breach, including withholding of payments, recovering payments previously awarded and prohibiting a person from receiving payments under any scheme for up to two years, thereby ensuring that public funds are properly expended, suitably protected against fraud and provide value for money.

The instrument provides powers of entry and inspection to enforce compliance with scheme agreements; for example, to check or inspect land, livestock, crops, plants or machinery and to verify compliance of conditions and review any activities carried out under the schemes. A formal complaints and appeals process is available if agreement holders are aggrieved by certain decisions taken by the department.

These instruments implement provisions in the Agriculture Act 2020. They begin the move from the inefficient direct payments model of the CAP and provide an important framework allowing new financial assistance schemes to operate effectively in line with the agricultural transition plan. I beg to move.

4.45 pm

Lord Rooker (Lab) [V]: My Lords, it is a pleasure to follow the Minister. He represents Defra, which is the key Brexit department—there is no question about that, and I know that the staff will have worked their socks off in the past year, with the pressures they have been under from all the various changes.

I took the opportunity to read the Commons debate on these important financial regulations last Thursday and I could not help but notice that four Conservative Back-Benchers were put on the committee, one from Scotland, one from Wales and two from England; that is, the Members for Aldershot and Corby. I can well understand why the Members from Scotland and Wales can find other things to do on England-only orders, but why on earth did the two English Tories not turn up to speak for the farming businesses in their constituencies? I am just amazed. It could not have had anything to do with Covid; people could come in and out of the room. This is a key, fundamental issue for farming businesses.

It is all uncharted territory for farm payments; it is new. Is that why we have only one year? The excellent Defra booklet, *Farming is Changing*, set out quite clearly the seven-year transition from the EU payments, but is it not crucial that farmers have a detailed forward plan for business decisions? When will the details for years 2, 3, 4 et cetera be published? In my view, it must be by October at the latest. We cannot wait to get to the end of the first year before we start to make key decisions for people and businesses for the following years. After all, with Brexit, we are in control. There should be no need for last-minute, one-year-at-a-time processes. Or is it the fact that the Treasury has plans to grab more of the EU money so that it leeches away from farming?

[Lord Rooker]

It is good that the publication of payments will remain, which is important for public consumption—it is still public money going to private businesses—but I certainly agree that pilot phases of any kind should not be published. Pilots are there for testing ideas. Some will work and some will not. You can have analysis of the pilots, but not under the public gaze, because it will simply stop people doing them.

I want to talk about a couple of wider issues, because I do not want to take too long. I know that the delinked payments and the lump sum payments are not intrinsically tied up with these regulations, but they are connected. Will those payments be directly linked to assist new entrants into farming rather than enabling existing companies to get bigger? It is a golden opportunity and it should not be missed.

How will hill farmers be treated and protected? They simply do not have the flexibility that other farmers have, not just with the environment but with the land and everything else. It is all self-evident and we understand the reasons, but they must not be forgotten.

As today is the 22 March, can the Minister say whether phase 2 of the farm resilience scheme will be provided as promised this month, with a start date in May? It is getting pretty close to the start of May. Can he assure us that the Rural Payments Agency has the trained staff and resources to deal with the claims? Will the claims be less onerous than under the EU system? The Explanatory Memorandum says that they will be "not … significantly more onerous", but the point is that they will be more onerous. Why on earth are they not less onerous than under the EU system now that we are in control of designing the system?

4.49 pm

The Earl of Devon (CB) [V]: My Lords, I note my interests as a Devon farmer. Given the weekend's criticism of Members speaking in their own interest, I add that I am proud to speak for farmers from Devon. This House is well served by Members with hands-on experience, and I particularly appreciate that both the Minister in this House and the Secretary of State in the other place are themselves farmers and are sensitive to farming interests.

I am grateful for the hard work of Defra in implementing the Agriculture Act, but these regulations raise concerns. Like many farming families, I sat down last week, having established harvest 2021, to review budgets and understand the implications of the agricultural transition on farming operations. The many uncertainties are a challenge for farmers, the environment and the provision of the affordable, healthy and nutritious food that our nation so desperately needs right now. But of more immediate concern is the fact that these uncertainties risk severely limiting the adoption of ELMS, thereby frustrating the Government's well-intentioned reforms.

As to the direct payments to farmers regulations, do the Government accept that decreased financial support will result in less money to invest in new equipment and technology and will require farmers to intensify their current farming practices in order to maintain their viability? This can only mean a decrease in relative productivity and an increase in environmental degradation. What steps are the Government taking to monitor these impacts during the transition period?

On direct funding, how much do the Government expect to save by these regulations, and where will that funding now be applied? Will 100% of the savings be redistributed to farmers? Can the Minister confirm that none of these funds will be diverted to the administrative expenses of the agricultural transition?

Finally on this regulation, what are the Government's plans for future reductions beyond 2021? I agree with the noble Lord, Lord Rooker; farmers are already planning for 2022, and necessary investment will not be made if they do not have a clear idea of their future funding streams. Without a clear road map, productivity and the environment will suffer.

I welcome the launch of the sustainable farming incentive pilot. Is it correct that the SFI pilot is unavailable to any farmer already part of the Countryside Stewardship scheme, and thus is available only to those who have chosen not to enter such schemes or whose schemes have recently expired? If so, it seems unlikely to be an effective pilot, if those being asked to trial SFI are sceptics and non-adopters.

Turning to the Agriculture (Financial Assistance) Regulations, the mechanics of monitoring compliance are essential, but the extent to which inspection burdens farmers, and particularly farmers' families, will directly impact their popularity. In this regard, there are a number of serious concerns. The regulations suggest that inspections may occur at a "reasonable hour", but nowhere is that term defined. Given the working hours and seasonality of farm work, this may be particularly challenging. Inspection mid-harvest or mid-lambing could be an unreasonable hour, at any time of day.

Inspections may take place anywhere other than a private dwelling, and yet, as the Minister knows, a typical farmhouse kitchen is often the administrative heart of farming operation, and sometimes also a creche for newborn lambs. How will inspectors gain access to the records they need if they cannot access private dwellings? Equally, how will the privacy of farming families be preserved under such an inspection regime?

There are notice provisions before a virtual inspection by live video link, but there are no such notice provisions required before inspection by remote sensing, thus inspection by drone is permitted without notice at any reasonable hour of the day. This raises major concerns for privacy and security, particularly as drones are now popular with criminals scouting rural targets. For those living on isolated farms, the presence of a drone overhead can be very disconcerting. Furthermore, many farmers have diversified into tourism, particularly here in the south-west. As drafted, these regulations may permit drone inspections of campsites and holiday lets, irrespective of the privacy concerns for guests.

It is not apparent either who the "authorised person" will be, and who such "other persons" as the authorised persons think necessary are. These individuals have considerable powers of inspection and enforcement, including the ability to take documents, inspect computers, and take a photograph or a record in digital form of anything on or associated with the land or premises.

This is a remarkably wide power. Indeed, it suggests that taking a digital copy of the family computer, if used in the farm office, would be permissible, and I see no safeguards around how these powers may be exercised.

Finally, the right of appeal under Regulation 31 is to a person or persons appointed by the Secretary of State, with no specificity on independence or qualification. Given that it is the Secretary of State's own determination that is being appealed, it seems contrary to the interests of justice to permit him or her to appoint the appellate tribunal.

This is by no means an exhaustive list of concerns, but they are extensive. Unless they can be resolved, there must be major concerns about the attractiveness of the entire regime. I look forward to hearing the Minister's reply.

4.55 pm

The Earl of Caithness (Con): My Lords, it is a reflection of the strange times in which we live that there is not a single person on the Labour, Liberal or Cross Benches actually in the Chamber. It is the first time I have taken part in a debate in your Lordships' House in over 50 years where this has been the case. Ah, we do have a Liberal Democrat finally arriving—a little late, but do not worry.

I support what the noble Earl, Lord Devon, said about drones, but I want to raise some other points for my noble friend. What does he expect to happen to the underspend on the basic payment system, particularly as we near 2024? Does he expect the Treasury to put its sticky mitts on this, or will it be recycled into Defra's budget?

Is my noble friend still convinced that the timeframe for the national pilots and the full rollout of ELMS and other schemes by 2027 is feasible? He will recall that we debated on the then Agriculture Bill that a delay of one year might be a sensible option. Given the problems in the countryside at the moment, I wonder if this is a matter at which he should look again.

I agree with what the noble Lord, Lord Rooker, said about future years, but I also think that there is certainly not enough information about the new scheme. The pain is clear for the farming community but the possible gain is very unclear.

I would like to ask my noble friend about the engagement with land managers and other stakeholders on the design of ELMS and the transitional arrangements. From what I have heard, there is some engagement, but people say that it is not as effective as it should be.

It is apparent that not enough credit is being given by Defra to the farmers for the work that they undertake on a voluntary basis which has maintained our countryside in the beautiful state that it is still in—the enormous amount of money and time that they have spent on biodiversity schemes, planting hedges and keeping wildlife. I hope that this is an area that my noble friend will be keen to make certain is taken fully into account.

While I am on wildlife, I turn to the problem of access, which I raised during discussions on the then Agriculture Bill. It is clear that, during Covid, people's attitudes and behaviours in the countryside are fairly reprehensible at times. The leaving open of gates, the amount of litter and the wilful misconduct in the countryside are alarming, given that the Agriculture Act of last year actually encourages people to go to the countryside. There is a Countryside Code; I do not have that much experience of it in England, but I certainly do in Scotland. At the entry gate of a property belonging to a charity which I run, and which is a heritage project, I have on a board the equivalent of the English Countryside Code. I am amazed by the number of tourists and visitors who do not read it, and, if they do read it, they wilfully ignore it. We have had fires, destruction and the removal of historic stones by people. That property is there for people to come and enjoy—not come and destroy.

What is my noble friend doing to make certain that visitors to the countryside, whom we welcome, are better educated and have more respect for the countryside than appears at present? Is he concerned that the alarming increase in the ownership of pets, particularly dogs, will cause a problem for farmers? When people get access to the countryside, they will take their dogs there and, unless the dogs are well trained and managed and kept on a lead, there is every chance that they will harass wildlife and cause distress for farmers. I hope my noble friend can assure me that Defra is looking at these important issues.

5 pm

Lord Whitty (Lab) [V]: My Lords, first, I suppose I should apologise to the noble Earl, Lord Caithness, for not sitting opposite him at this point. I commend those who come in but I have not yet managed it myself.

I want to intervene briefly. I understand the necessity of the regulations, and I supported the general direction of the Agriculture Act towards the public good, but I want to query aspects of the broader transitional strategy on farm support and its differential impact on different forms and sizes of farm.

The one benefit of the much-derided direct land-based payment was that it applied—theoretically, at least—to the whole of farmed land. If the cross-compliance of environmental and agricultural standards had been properly directed and enforced, there would have been a benefit to the whole environment, the agricultural state of the farm and the income of the farmer. Regrettably, that did not happen. It needs to be rectified in this phase. By the end of the transitional period, we need to ensure that, whatever regulations are there, the various schemes and payments are properly explained, understood and enforced.

This is no criticism of Defra—I know that it has put in an enormous amount of work in getting this far—but the pace and sequence of the rundown of direct payments, and the introduction of ELMS and the other payments provided in the Agriculture Act to support land management, must pay heed to two things. The first is the type of farming and the degree of past dependence on direct payments. The second is the appropriate form of ELMS that would suit the land and history of a particular farm.

It is clear from papers published by the Government before the introduction of the then Agriculture Bill that the most dependent on direct payments—in some

[LORD WHITTY]

cases, up to and over 100% of profits—were LFA hill farmers, then lowland livestock, then mixed farms and dairy farms. Plus, it impacted more on tenant farmers, in general, and some part-tenanted farms. It is also likely that it will be those very farmers who will find multiple, piecemeal ELM offers the most difficult to understand and fulfil, and will need the most concerted effort to develop them.

As I said several times during the passage of the Bill, that underlines the need to concentrate on whole-farm schemes for ELMS and other provisions. It is right to decrease direct payments to those who are the most vulnerable in this sense more slowly, but it is also important to develop whole-farm schemes for such farms more quickly and not simply go slowly in that direction—although these regulations do move a little in that direction. There needs to be differentiation and a full understanding of the impact on what are largely small farms, or at least small businesses even if, in geographical terms, they are relatively large farms in the uplands.

My second point on this issue is rather different. I ask the Minister: is it the objective of policy to shift English farming away from livestock towards horticulture and vegetable production? I do so because, like the noble Earl, Lord Caithness, last year I was a member of the Food, Poverty, Health and Environment Committee, chaired by the noble Lord, Lord Krebs. One of our conclusions—only one—was that UK diets, particularly those of low-income groups and children, need to move more strongly towards fresh fruit and vegetables. Part of providing that would be having more home-produced fresh vegetables and to otherwise subsidise and incentivise more horticulture in this country.

The problem is that, in many instances, the land now used for livestock is often—though not always—unsuitable for horticulture. Is it the Government's aim to achieve such a shift in production and diet? Is that part of this transitional period? If so, can they achieve that while avoiding a dangerous escalation in the overly heavy use of fertilisers to make less fertile soil more fertile? That goes for pesticides, too, with the concomitant damage to watercourses, air quality, soil, human and animal health, and biodiversity. Should the approach, particularly in upland areas, be to focus on rewilding some of the land rather than shifting production away from raising livestock and towards producing fruit and vegetables? That is a long-term aim but I would like the Government's comments on it.

5.06 pm

Baroness Bennett of Manor Castle (GP) [V]: My Lords, it is a pleasure to follow the noble Lord, Lord Whitty, with whom I share an interest in horticultural production—particularly in the interests of public health—which I think needs to be done through agroecological approaches, addressing his concerns about fertiliser use. I do not think he needs to apologise for not being in the House. After all, day after day we hear from the Woolsack that speakers will be treated equally wherever they are, even if that is not 100% accurate.

Again, I welcome the Government's at least partial delivery of a long-term Green Party policy. In the days of the common agricultural policy, the Green Party called for the CAP to be capped in terms of payments to the largest landowners. For a number of years, our call was for the maximum payment to be £100,000. Once again, the Greens lead and others follow. I hope that this reflects government understanding about the damage done by the extreme concentration of land ownership in England, and the need to democratise it to deliver land reform.

The fact that payments for the largest farms are being reduced by 25% for payments over £150,000 but by only 5% for the smallest farms is a small step in the right direction, at least. However, it is not nearly enough. I want to see payments directed strongly towards the smallest farms, including those that were regarded as "too small" under the previous CAP rules but which are often hugely productive in terms of healthy food, provide good employment and maintain excellent environmental conditions—care for their soil being a particularly obvious imperative for them.

That is not to say that there are not grave concerns about the progress—or lack of it—of government plans for payments to farmers. As the noble Baroness, Lady Young of Old Scone, said earlier at a meeting of the APPG on Agroecology, there is a grave concern that payments under environmental land management schemes may be adequate only to maintain what is being done now, more or less, while there is real concern about the slow pace of the development of these immensely complex schemes.

Since this House last discussed these issues, we have heard initial announcements about the sustainable farming incentive, but I note the words of a Tenant Farmers Association policy adviser to *Farmers Weekly* that this is

"just the start of a long journey moving away from area-based payments."

She said:

"There is still a lot of work to be done to ensure SFI becomes a robust and tangible scheme that can be practically implemented for any farming system."

As the noble Lord, Lord Rooker, said, this is uncharted territory.

We are talking about eight standards to allow farmers to build their own farm agreements for greener landscapes, cleaner air and water, and to guard against the climate emergency and flooding—at three different levels. The complexity of this and the potential difficulty of monitoring delivery look daunting; also, as the noble Earl, Lord Devon, said, farms are often homes too, so there are privacy implications. Indeed, the Minister outlined this in his explanation of the inspection access rules in his introduction to the debate. I appreciate that he may not have time today to talk in detail about the plans for delivery, but we—farmers and communities—need to see the rapid delivery of clarity and hear assurance that this will deliver real progress for our horrendously nature-depleted land, with its poisoned waters and trashed soils.

Another key issue that has been very much at the forefront today is the non-progress of the Environment Bill. I understand the need to hold it in the other place

for Prorogation—whether that is really the most efficient way for a constitution to operate is a question for another day—but I heard a concerning comment this morning from a Member of the Government's party in the other place suggesting that the need to get the Environment Bill in place by COP to avoid international embarrassment meant that your Lordships' House would have to rush it through and not try to do too much to it. Given the close links between these payment regulations and the operation of the Bill, I hope that the Minister can give me an assurance today that the Government intend that this House, with its large number of expert voices with a strong interest in the issues in the Environment Bill, has proper time to scrutinise it. The Domestic Abuse Bill has demonstrated how much Bills can be improved through such scrutiny. The Environment Bill is even larger in scope and equally crucial in impact.

5.10 pm

Lord Berkeley of Knighton (CB) [V]: My Lords, I rather feel that the noble Earl, Lord Caithness, should be congratulating those of us who have not come in but are speaking from home. This is quite an important point; I do not want the public to get the wrong impression from looking at this picture of a relatively empty Chamber. As with the noble Baroness, Lady Bennett, my understanding is that the Lord Speaker and the Convenor of the Cross Benches were almost begging us not to come in, to protect the staff and for the safety of other Members. I hope the Minister will reconfirm that.

On the matter at hand, I agree with the noble Earl, Lord Devon, and the noble Lord, Lord Rooker, that forward planning and certainty are essential in any business, but particularly in farming, which is a long-term issue. I am sure that the Minister, being a good Conservative, will take that point. It is very good to have the figures for 2021; I hope that the Minister will be able to reassure us that we will get the follow-on figures as soon as possible.

A point was raised, which also applies to the comments made about hill farming, about how we make a living. I am sitting here on a hill farm; it is very beautiful and I declare my interest as a very small-time farmer compared to some noble Lords. The Minister said that there was money for more productivity; the problem with productivity is that it does not always go hand in hand with conservation. Does he have any thoughts about that?

On young farmers, getting new blood into the farming industry is essential. One way we can sort that out is by thinking about how we make payments and distribute them fairly between landlords, tenants and, very importantly, agents, who are on commission.

The noble Earl, Lord Caithness, mentioned the public. At the top of my hill farm, there is a very beautiful view and people pull in and have a picnic or walk along the top. I am thrilled that they do—they can sit there admiring the view—but I am astonished that they then toss out their sandwich covers and tins. I just cannot understand the mentality. We may need to continue to make the penalties for littering and tipping, which we have talked about before, even more stringent. After all, they go hand in hand with ecology and conservation. This essentially comes down to education. As with so many things, we must do better at explaining to the public why this is such an anti-social thing to do.

However, by and large, I welcome the Government's thrust here towards a more ecological way of farming and look forward to hearing the Minister's comments in due course.

5.14 pm

Lord Lilley (Con): My Lords, unlike all those who have spoken from home, I am old enough to have been vaccinated and feel relatively secure in this place, but it is comforting to know that many of them are so much younger than they look.

As is usual with debates on agriculture, this debate has been dominated by those speaking for the landed interest—farmers, landowners and, to a limited degree, environmentalists. It is right that we should hear their concerns. We want a healthy agricultural sector and a beautiful environment. However, we rarely hear from consumers and taxpayers, so I will say a few words from their point of view.

I understand that the Government are bound by the pledges made during the election and the referendum to maintain agricultural payments at the level set by the EU for a number of years. Instead of making direct payments to farmers and landowners, the Government intend to phase them out, replacing them with payments to farmers for providing public goods, maintaining the environment and protecting biodiversity.

This raises a number of questions. First, should we continue the same level of spending that we have inherited from the EU? Virtually all speakers so far have assumed that we should or will do so. That raises a second question: what level of environmental goods do we want? It would be an extraordinary coincidence if the cost of the environmental and public goods we think that the taxpayer wants and is prepared to pay for were exactly the same as the previous level of subsidy, inherited from the EU. After all, we used to get a beautiful landscape as a by-product of farming. It was by accident, not design, and certainly not the result of paying farmers over the centuries to farm in an aesthetically enjoyable way. The presumption must be that we do not need to spend all the EU subsidy on environmental goods indefinitely.

The third question is whether these payments are really intended to provide an income roughly equal to the loss of direct subsidy payments. Farmers and several noble Lords seem to assume that they will, but if the payments for environmental goods are equal to the additional cost to farmers of providing the environmental benefits, they will not replace the subsidy income they have lost. For example, if payments compensate for the loss of income resulting from land taken out of production for reasons of biodiversity or otherwise, they will not also offset the loss of subsidy income. Likewise, if the payment equals the opportunity cost to farmers of their or their employees' time spent on environmental goods instead of on farming, it will not provide any net income to compensate for the lost subsidy. Similarly, if the payment simply meets the cost to farmers of resources and equipment that they

[Lord Lilley]
have to buy in or hire to provide environmental goods and services, they will not provide any replacement of the lost subsidy.

However, farmers and most noble Lords who have spoken assume that these environmental payments will replace the lost direct subsidy or a significant part of it. They in effect assume that they will be paid for environmental goods above the cost to them of providing those goods, and probably that they will be paid for providing environmental goods and services which they would have provided anyway as a by-product of farming. We should doubtless be grateful for that, but we should not necessarily expect to pay for it.

I hope that in this and the other House we will look at the long-term costs of subsidies to farming and see whether they can perhaps be phased out. I happened to become a good friend of the late and sadly lamented Michael Moore, the former Labour Prime Minister of New Zealand, who phased out, very dramatically, all subsidies for agriculture in New Zealand. We should learn some lessons from that experience. The first lesson he told me was not to do it as dramatically and overnight as New Zealand had to in the crisis that it faced—any phasing out of subsidies should be sensible and over a period of time.

However, we should recognise from New Zealand's experience that the taxpayer's interests and agricultural interests are not always as diametrically opposed as they might seem ex ante. Although the abrupt removal of subsidies in New Zealand dramatically reduced average farm incomes, within five years they had reached and exceeded the average incomes before the subsidies were removed. It seems that a lot of the subsidy that was previously given to the agricultural industry in New Zealand—it may be the same here—ended up not in the incomes of farmers but in the margins of suppliers of fertiliser and other agricultural products. In the long run, when farming not for subsidies but for the value of the products produced, the productivity growth of agriculture was greater and the opportunities for increasing productivity were much greater than people had supposed.

5.20 pm

Baroness McIntosh of Pickering (Con): My Lords, I welcome these regulations and thank my noble friend for bringing them before us today. The Government have been as good as their word, as they promised to bring forward the details on this. This is obviously a landmark time, announcing the change from the old regime to public money for public goods. I hope my noble friend will permit me to raise a number of questions and to press him further in this regard. I echo what my noble friend Lord Caithness said about the work farmers do, particularly in the countryside and in the bad weather we have had this winter in the north; many go out and clear the roads when other vehicles are unable to use them.

Can my noble friend confirm, as the Government are committed to sharing more information about future ELM schemes, when this information will be available? Paragraph 10.5 of the Explanatory Memorandum for the second set of regulations states that land management plans

"will not be published during the pilot phase",

which begs the question, when will they be published? I echo the concern expressed by the noble Lord, Lord Rooker, and others: we must have the detail, if possible, by the end of this year and no later.

I remember that provision was going to be made to encourage farmers reaching the end of their natural farming life to seek retirement. This was welcomed on all sides during the passage of the Agriculture Bill in this place. Perhaps I am missing something, but I do not see the detail in the regulations before us today. Is this is covered by these regulations, or do the Government intend to deal with it later? This goes to the point made by a number of noble Lords: that we need new entrants but we need to make arrangements for those who are still actively farming but approaching the end of their farming life to retire, where appropriate.

Paragraph 3.1 of the Explanatory Memorandum for the first set of regulations tells us that they apply only to England and that the other nations will make their own arrangements. I am particularly concerned that if Scottish farmers are to continue to benefit from direct payments, which I think they will, there will obviously be some envy on the part of northern farmers looking across the border. Is this a source of concern to my noble friend?

Also, can my noble friend confirm that the arrangement will continue to be that farmers who are doing the work, actively farming and taking the economic risk—in particular, those in sustainable farming and food production—will continue to benefit? That is not entirely clear, particularly given that paragraph 7.1 of the Explanatory Memorandum for the second set of regulations clearly states that the Secretary of State will

"give financial assistance to beneficiaries, including (but not limited to) farmers, horticulturalists, growers, foresters and those responsible for the management of land."

Will my noble friend confirm today that if the tenant is the active farmer taking the economic risk, they will continue to benefit from the financial provisions before us?

Will my noble friend comment on the link between the Agriculture Act and the Trade Bill, which returns to the House this week? Does he share my view that the two are related and there must be the desire to maintain the highest level of self-sufficiency to ensure that we have a sustainable supply of homegrown food, if for no other reason than food security? I am sure he will wish to join me in again commending the work of Henry Dimbleby on the first published part of the national food strategy in this regard.

With those few remarks, I commend the regulations, but we need to see more detail, particularly on what ELMS will require and when the pilot schemes will be available. Will my noble friend confirm that one of them does extend to the border of North Yorkshire and County Durham, and that tenant farmers who are currently eligible will continue to be so under the new schemes? I would be interested to know if that scheme was in place.

Finally, does he accept that marts reflect the link between market towns and the rural economy, and that livestock farmers deserve to have a continued and vibrant future under these regulations?

The Deputy Speaker (Lord Alderdice) (LD): The noble Lord, Lord Grantchester, has withdrawn, so I call the noble Lord, Lord Northbrook.

5.26 pm

Lord Northbrook (Con) [V]: My Lords, first, I declare my interest as an arable farmer and a member of the NFU. As other noble Lords have stated, the key point of the SI concerns the annualised confirmation of the BPS cuts. This is the right way for it to be done, given the Agriculture Act's reference to pausing the cuts. However, like my noble friend Lord Caithness, I would like to ask the Minister, if the farming budget remains the same until 2024, what will happen to the underspend of the BPS moneys?

I would also like to ask the Minister some questions about farmers' finances that are not directly related to this SI, so I will understand if he would prefer to write to me on these. According to the NFU, there are two main farming industry issues post-Brexit. The first is livestock exports, and the second is the sanitary and phytosanitary matters in connection with the Northern Ireland protocol.

With regards to livestock exports, the NFU has made a detailed submission to the House of Commons EFRA committee inquiry. Now that the UK is now classified as a "third country" by the EU, having left the customs union and single market, the NFU is concerned that this change of status is leading to confusion and delays at the borders, in the short term at least, which could lead to loss of value and increased wastage.

There seem to be several issues. First, EU officialdom is being overzealous regarding the correct paperwork. Dutch and French ports seem to be major culprits overall. Secondly, there are over-rigorous inspection rules for carcasses. Exports of live animals for breeding and slaughter are not possible because of a lack of necessary facilities in EU ports. Export health certificates —EHCs—can be submitted only in hard copy and are required in duplicate for different authorities. The NFU knows one example of a vet needing to stamp paperwork 72 times for one consignment. This is very onerous for the limited number of official vets and adds costs to the export process. The system is also paper-based and must be modernised.

I ask the Minister that Her Majesty's Government make a clear public statement on the future of exports of live farm animals for breeding, which would give confidence to European investors and breeding companies alike. The pig sector seems to have been particularly badly affected regarding trichinella testing and its ability to export cull sows. The NFU has seen a case where one load of pigmeat took 20 hours to clear border checks at Calais before ultimately being rejected by the customer in Germany because of the delay and loss of specification.

Poultry exporters are also struggling, not only with the levels of paperwork required for export, but with the interpretation of what is required on the EHCS by the French and Dutch border posts in particular. Farmers have also experienced issues with TRACES, the online system used for health certification, and tracking consignments of animals or animal products entering the UK market, as well as the issuing of the common health entry document. Lamb and sheepmeat processors and exporters have also commented on the issues they are currently encountering, including problems with grouped or consolidated loads and the risk of incorrect paperwork, lack of training of staff at the borders and new costs from increased inspections.

Moving on to Northern Ireland, livestock sector problems also abound. First, there are major issues on the movement of live farm animals. EU regulations are making the export of cattle and sheep from Great Britain to Northern Ireland a very difficult and costly exercise, which will curtail trade, bar a few high value exceptions.

I do not have time to cover the problems in other areas, namely the scrapie requirements for export of breeding sheep from Great Britain to Northern Ireland. In addition, there are poultry import issues. Sending young birds to Northern Ireland has become unviable due to EU regulations. The horticulture sector is suffering, due to export delays because of complex additional paperwork and lack of government staff to undertake inspections. The potato sector is badly affected by the prohibition of seed potato imports. As with the UK-EU trade, mixed loads and groupage are becoming too complex and stopping trade with the rest of the UK. Other issues include live plant root-washing requirements and machinery parts and field machinery movements across the Irish Sea. Will the Minister write to me on the latest progress in solving these issues?

Finally, is there any news regarding the changes for exports and EHCs for composite products due on 21 April? The NFU states that the sooner this information is produced the better.

5.31 pm

Viscount Trenchard (Con) [V]: My Lords, I thank my noble friend for introducing the debate on these regulations. I declare my interest as a trustee of the Fonthill estate in Wiltshire.

I refer first to the direct payments SI, which contains the words "reductions" and "simplifications" in its title. From the farmer's point of view, it is all too clear what "reductions" means. What "simplifications" are achieved in these regulations? The Government and Ministers have, rightly, made much of our new freedoms to adopt a more agile, simpler regulatory regime, now that we are no longer bound by the cumbersome, expensive and bureaucratic EU regime, which gives much too much importance to the precautionary principle. Look how that played havoc with the vaccine rollout in EU member states. On 18 March, my honourable friend Victoria Prentis said in another place:

> "We published the reductions back in 2018, so that farmers would have time to prepare for the changes. The SI sets the reductions for the 2021 claim year only; we will set out the reductions for later years in future SIs."—[*Official Report*, Commons, Delegated Legislation Committee, 18/3/21; col. 3.]

On 7 July last year, in Committee on the Agriculture Bill, and on other occasions, I asked whether my noble friend the Minister could be much more specific in informing your Lordships of how much financial assistance will be made available under the ELM scheme, and whether it will completely compensate for the loss of direct support payments, which will hit farming businesses hard in 2021. I think he said that

[Viscount Trenchard]
the total savings from the progressive cuts in dividend payments would be channelled back into payments to farmers, but it is not clear whether the reduction in direct payments will be made good in the same year, or if the Government intend to retain the saved payments for a year or more.

I understand why the Government have decided to hit the larger farming businesses harder. However, although the larger estates are better able to survive the withdrawal of direct payments, it is also true that the larger farming businesses will suffer reductions in income amounting to a large percentage of their profit or, indeed, to an amount greater than their profit, pushing many businesses in to a loss-making situation. The larger farming businesses employ a large majority of agricultural workers and the prospects for future employment in the sector will be negatively affected unless the Government can give much more clarity on how businesses can mitigate the loss of direct payments. Indeed, it should be made possible for those who are particularly innovative and active in introducing new, environmentally friendly practices to receive more than they have been receiving under the present system.

The Agriculture (Financial Assistance) Regulations provided an opportunity for the Government to explain exactly how much farmers will be able to earn from four different schemes. The Explanatory Memorandum describes the environmental land management scheme as

"the cornerstone of our new agricultural policy."

However, this will not be launched until 2024, so only those few farmers chosen to participate in the national pilot will gain any financial benefit from it. The tree health scheme is also subject to a pilot scheme and will not be launched across England until 2024, although those who benefit from the current countryside stewardship tree health scheme may, as I understand it, continue to do so. It is not clear what criteria will be applied to determining whether applications to the farming investment fund will be successful.

It is not clear when, or how, the money saved from cuts to direct payments will be paid over to farmers. Furthermore, a large farm not selected for the ELM pilot scheme, however well managed from an environment standpoint, will face a substantial shortfall in income for three years. There is not yet enough information for farmers to estimate how much they will be able to earn in mitigation of the cuts to their income, which will take place this year, so it is impossible for them to make sensible plans for the future. The questions asked by my noble friend Lord Lilley in this regard are very pertinent. In particular, does the Minister expect that farming may indeed become more profitable when subsidies are withdrawn, as in New Zealand? Will the Minister commit to making available as much precise information as he can, as early as possible, to help farmers make realisable plans? That should help stabilise employment prospects in the sector. I look forward to his reply.

5.37 pm

Baroness Bakewell of Hardington Mandeville (LD) [V]: My Lords, I thank the Minister for his time, and that of his officials, in providing a briefing on these two instruments, and for his introduction. I regret that I am not able to be in the Chamber, due to underlying health conditions, but do not apologise to the noble Earl, Lord Caithness.

The first SI deals with this year's reductions in direct payments for England only. I understand that there will be future, annual SIs to cover each year's payment reductions. The noble Lord, Lord Rooker, referred to this, and to having the information sooner rather than later. Farming is not a short-term function. Paragraph 7.5 of the Explanatory Memorandum refers to the abolition of the 5% reduction for payments over €150,000. The SI itself, in the table under paragraph (3), refers to amounts above £150,000 being reduced by 25% and then, in paragraph 7.3, refers to substituting 25% for 17.5%. I understand that this relates to the young farmers payments, but would be grateful if the Minister could provide some clarity on this issue.

The simplified processing of applications of cross-border farmers who have land in England and other parts of the UK, is to be welcomed. This should make everything easier and simpler. Can the Minister give reassurance that the devolved Administrations are completely on board with this aspect? The noble Baroness, Lady McIntosh of Pickering, referred to this matter. The simplifications and flexibility on rules and inspections are also welcomed, but this may lead to some confusion among farmers. The noble Earl, Lord Devon, referred to notice of inspections. Again, can the Minister provide some clarity over this?

The second SI, on agriculture financial assistance, deals with four schemes, as has already been said: ELMS, the tree health pilot, the Countryside Stewardship scheme and the farming investment fund. ELMS has been the subject of ongoing pilots and we now appear to be in a position to ask for expressions of interest. The process will continue in June, when eligibility will be checked. Can the Minister say whether this is extended to tenant farmers or is the scheme open only to landowners? It is important to restructure payment to smaller farmers, as the noble Baroness, Lady Bennett, indicated.

The tree health pilot is ahead of a three-year pilot which will be launched in the spring and summer. If I understand it correctly, it will monitor and cut down diseased trees and ensure that we have the right trees in the right places. That sounds sensible. However, given that trees take an age to reach maturity and often grow because of seed dispersal by birds, animals, and the wind, I am somewhat concerned that if it is discovered that a tree has grown in the wrong place, it may be felled. I realise this is only a short pilot, but I am worried about the impact of this scheme.

It is not clear just how finance will be allocated to those taking part in the initial pilot or the following three-year pilot. Can the Minister confirm that the tree health pilot is likely to be funded from the Forestry Commission and give some indication of just how the funding for this scheme will be allocated, and against what criteria?

The Countryside Stewardship scheme is a transition from the EU schemes and the move towards ELMS—other noble Lords referred to this. I welcome the fact that this allows farmers to exit the EU scheme as and

when they are accepted on to ELMS. However, what will happen to those who are not accepted on to ELMS and fail the eligibility test?

The farming investment fund allows farmers to apply for grants for equipment and new technology and receive support from a specified list. How does a supplier of equipment and technology get on to this specified list? What happens if a farmer requires a grant for investment but for something which is not on the list? Does the UK infrastructure bank have a role in assisting farmers to modernise their farms to help them meet the Government's environmental agenda?

The Explanatory Memorandum refers in the fourth bullet point of paragraph 6.1 to the discretion of the Secretary of State over matters of non-compliance. It is welcome that a more flexible approach is being taken but this could lead to some confusion for farmers. Can the Minister give some clarity over the three-stage process for appeals on non-compliance, which other Peers referred to? The Explanatory Memorandum refers to agreement holders having to keep records and provide certain information. Does this mean less paperwork for farmers or will it result in more?

I was disappointed that the consultation on the changes in this SI was directed only at a limited number of stakeholders and ran between 4 August and 1 September last year. This was a very short period and the stakeholders have flagged up several concerns and questions in the Explanatory Memorandum.

There is a lot of change in this very short SI, and this will have implications not only for farmers but for the Rural Payments Agency. The RPA has not had a wonderful reputation in the past and I wonder whether it will cope. Does the Minister feel that there is sufficient capacity in the RPA for these changes to be effected smoothly and without a detrimental impact on farmers? The noble Lord, Lord Rooker, referred to that.

Lastly, I completely agree with the noble Lord, Lord Berkeley of Knighton, on thoughtless waste and littering. It really is time for much stricter penalties in this area.

5.44 pm

Baroness Jones of Whitchurch (Lab) [V]: My Lords, I thank the Minister for his helpful introduction to these SIs and thank all noble Lords who have contributed to this debate this afternoon.

As the Minister said, the SIs represent an important step in the transition from the old CAP regime to the new financial assistance proposals based on public money for public goods, which we spent many happy hours debating during the passage of the Agriculture Bill. Undoubtedly, the Government have taken on a huge task in attempting to draw up the details of a new funding regime, which needs to be robust in its systems of accountability but also fair to those who have to navigate it.

The Path to Sustainable Farming, published last November, and now of course the launch of the sustainable farming incentive pilots, are useful first steps. However, as many noble Lords have illustrated in this debate, as each building block of the transition is announced, it answers many questions but raises even more. With that in mind, I have a number of questions which flow from these SIs.

First, the direct payments to farmers SI provides for the reduction in direct payments of between 5% and 25% in 2021. I think it is fair to say that this announcement last year was received with some dismay by the farming community, given that they were being asked to take a payment cut without any chance of claiming under the new sustainable funding regime until 2022; in other words, it is an absolute cut. I would be pleased if the Minister could explain why it was necessary to proceed on this basis rather than to run down access to one fund and increase access to the new fund on a balanced basis. It seems rather provocative at a time when the good will of the farming community to embrace the new regime is absolutely essential. Can we be clear: have those savings gone into a ring-fenced pot of money, and can we be assured that they will be used only for funding the three tiers of ELMS as they are rolled out in the coming years?

Also, as the Minister knows, the details of the sustainable farming incentive pilots announced this month have only eight categories of activities for which payments can be made via the pilots. These seem quite limited in scope. Can the Minister update us on whether the timetable for the rollout of other schemes, which might provide other new opportunities for farmers to access grant funding, is still on track? In particular, given the economic hardship being experienced by many farmers, can he confirm that details of the farm resilience scheme—phase 2—which was announced earlier, will still be provided this month, with a start date of May 2021?

Also, as has been said, this SI deals only with the reductions in direct payments for the year 2021. We know that the original plan was for this to be a progressive reduction year on year. Is it still the plan that future years' reductions will come before us each year as the transition continues to be rolled out, rather than allowing it to be done on a more obvious long-term planning basis, perhaps grouping a number of years at a time?

The Agricultural (Financial Assistance) Regulations 2021 set out the principles on which financial payments will be administered. I think it is fair to say that this is an enabling SI which puts all the onus on the Secretary of State to devise a scheme with more flexibility and fairness than was perceived to be applied by the CAP regime. However, the devil is in the detail, and we do not have that detail before us today. There is a great deal of trust resting on the shoulders of the Secretary of State to create a less bureaucratic and less burdensome system for applying and checking claims. In fact, as my noble friend Lord Rooker pointed out, rather worryingly, it says on page 4 of the EM:

> "The instrument does not impose duties that are significantly more onerous than before".

I hope that the opposite will be the case and that people applying for financial assistance will find the regime more accommodating and user-friendly. However, if I am honest, the track record of Defra does not bode well on this, and the recent experience of hauliers and exporters to the EU is testament to that.

Also, I think I am right to say that the Rural Payments Agency will administer the claims. Can the Minister explain what extra training and support it will receive to ensure that the envisaged light-touch

[Baroness Jones of Whitchurch]
regime is actually in place? Does it have sufficient staff to make individual determinations of claims on a more flexible and common-sense basis? Who exactly will provide the independent appeals process for those who feel that they have been dealt with unfairly? Can we be assured that they will be truly independent? Is the "public-facing Defra database" of payments already in existence, or will this require a new database separate from CAP, with all the ensuing problems that we have had with databases in the past?

Finally, as the noble Baroness, Lady Bakewell, says, we are told that the consultation on the SI ran from 4 August to 1 September 2020. By any stretch of imagination, this was a short consultation, of about three weeks.

I hope that the Minister can assure us that the proposals before us today have the confidence of the farmers and land managers who will be expected to roll out the new regime and make it a success. I look forward to his response.

5.50 pm

Lord Gardiner of Kimble (Con): My Lords, I thank all noble Lords for contributing to this very interesting debate. I am afraid that, inevitably, there are matters of detail on which I will have to write to noble Lords. I open with the reference of the noble Lord, Lord Rooker, to Defra: I think not only of socks but of other garments that have been worked extremely hard. In turn, I reference the work of farmers, which has been so evident last year—as it has been throughout history—in the production of food for our nation. Also, as my noble friend Lord Caithness said, contrary to some of the contributions, my experience of farmers and landowners includes the work that they do that has not been rewarded on enhancements on their farms. They do it free of charge because they want an attractive farm and are custodians of their land for the next generations.

The noble Baroness, Lady Jones of Whitchurch, asked about the SI situation. Our intention is that we may well lay an SI every year—a point that the noble Lord, Lord Rooker, made. We intend to allow Parliament to debate the reductions closer to when they will be applied. The savings from reductions in direct payments will be ring-fenced for agriculture—a point raised by noble Lords. The noble Earl, Lord Devon, and my noble friend Lord Northbrook asked about the money saved on direct payments and where it is to be redeployed. The 2021 direct payments reductions will free up between £169 million and £179 million to be redirected into more Countryside Stewardship agreements, higher-level stewardship extensions and other schemes for farmers.

The reductions that we plan to apply to direct payments for 2021 to 2024 were set out in our agricultural transition plan on 30 November 2020. We intend to continue to make gradual reductions in direct payments across the rest of the transition period until the last year of direct payments in 2027. The new schemes will address productivity, hence profitability, and environmental enhancement. Mindful of my own farm, on productivity improvements, I think of what precision farming and integrated pest management present in terms of enhancement of the environment but also increasing productivity. That is a point I make to the noble Lord, Lord Berkeley of Knighton.

The noble Baroness, Lady Jones, and the noble Lord, Lord Rooker, referred to the future farming resilience fund phase 2 and its launch. The grant application process for the next round of funding is planned to open at the end of this month.

The noble Baroness, Lady Bakewell, asked for clarification on percentages. This instrument changes a figure used in the calculation of the young farmer payment from 25% to 17.5%. This ensures that eligible farmers receive roughly the same amount for their young farmer payment as they did before the greening payment was removed. I say to my noble friend Lord Trenchard that the removal of the greening payment was indeed, I think, a sensible simplification.

My noble friend Lord Caithness and several other noble Lords would like more information on new schemes. Obviously, I understand that. The *Farming is Changing* leaflet was made available to farmers and land managers last November. We have since published further information about the schemes. The Countryside Stewardship scheme opened an application window on 9 February. Details of the sustainable farming incentive scheme pilot were published on 10 March.

Perhaps I may unite my noble friend Lord Caithness and the noble Lord, Lord Berkeley, on this matter. They both spoke about ensuring that visitors and, indeed, their dogs respect the countryside. I was at a meeting on this last week. Natural England is working on a refresh of the *Countryside Code* alongside stakeholders, and a relaunch of advice to the public is planned for Easter. There is much more to be done on educating the many people we want to come to enjoy the countryside to respect it. It is a working and living countryside that we all want to enjoy.

The noble Lord, Lord Rooker, raised an important point about new entrants, and my noble friend Lady McIntosh raised the issue of retirement schemes. These are clearly all part of what we want to do to encourage new entrants. We plan to carry out a consultation on the proposed lump-sum exit scheme, but it is not covered by the regulations.

A number of noble Lords raised the issue of upland farms and lowland farms—a range of farms. As I said before, our pilots are intended to involve farms of all sizes, topography and tenures, and it is very important that they work. That is why the pilots are all about a codesign—a point I should have made—with the people who will take them forward, and we will then have a national rollout.

The noble Lord, Lord Whitty, raised an issue that I do not see as an either/or. I am absolutely convinced that benign pastoral farming of livestock is a net benefit to the environment and a producer of healthy food, as is the production of fruit and vegetables. I am not sure that fruit and vegetables would be very easy to produce on some of the uplands that we all know of. Different parts of the country produce different parts of our food and all sectors are important in the balanced diet we wish.

My noble friend Lord Lilley raised an interesting point about the taxpayer and the consumer, one of which I am very conscious as a farmer and a receiver of support. I do not have time to get into it today, but I was talking to a New Zealand Minister of a previous Administration about the consequences of the change that my noble friend mentioned there for the environment and how unpopular it was with many parts of the electorate. That is why we seek a balance and why I spent quite a lot of time during the passage of the then Agriculture Bill stressing that the farmer has many purposes. The first, of course, is producing food but, with 70% of the land of this country of ours farmed, farmers play a crucial role in ensuring that we address emissions, climate change, environment enhancement, clean water, clean air and many other things besides.

My noble friend Lady McIntosh and the noble Baroness, Lady Bakewell, asked about the devolved Administrations, with whom we work closely; as I said before, the future agriculture framework is important in that regard. I should also say that the time-limited package to support farmers in protected landscapes, particularly upland farmers, is an important scheme that we are working on.

Turning to financial assistance, the noble Baroness, Lady Jones, asked about the onus on the Secretary of State to come up with the detail of schemes. The scope of this instrument is specifically enforcement, monitoring and data publication in relation to the schemes. This reflects the relevant powers of the Agriculture Act 2020. The detail of the schemes themselves will be set out in guidance.

The noble Baroness, Lady Bakewell, and my noble friend Lord Caithness asked when detailed guidance for the four schemes would be published. Detailed guidance for each scheme will be published ahead of its launch so, for tree health, we will publish this summer; for environmental land management, guidance will be published ahead of the application window for pilot opening in June.

A number of noble Lords raised the issue of the new schemes. Our ambition is to deliver new schemes which are simpler for farmers than their predecessors, and we have worked closely with a range of stakeholders to ensure that.

The noble Baroness, Lady Jones, asked about the agency's readiness for the pilot. The RPA inspectorate has been preparing inspectors over the past 18 months to move towards a more supportive tone of inspections. Indeed, the RPA payment record has become very impressive.

The noble Baronesses, Lady Jones and Lady Bakewell, asked about consultation. During the consultation, Defra engaged with 59 key stakeholder organisations to ensure that it had a thorough understanding of their views. Those views became extremely helpful and their responses were invaluable. The results of the consultation were summarised in a response document.

The noble Earl, Lord Devon, and the noble Baronesses, Lady Bakewell and Lady Jones, asked about the independence of the appeals process. Under Regulation 31 of the Agriculture (Financial Assistance) Regulations 2021, the Secretary of State must appoint a person or persons to consider appeals. In practice, this will be an independent panel, which is the process currently in use. The Independent Agricultural Appeals Panel is an advisory non-departmental public body; members are independent external experts.

I am afraid that I will have to write on many other points. I will deal with the definitions referred to by the noble Earl, Lord Devon, which will give him reassurance. I say to my noble friend Lord Northbrook that we are working on this, but there is more to be done—many of the export problems have now been resolved. The tree health pilot is being delivered by the Forestry Commission. With those details and many more to come, I beg to move.

Motion agreed.

Agriculture (Financial Assistance) Regulations 2021

Motion to Approve

6.01 pm

Moved by ***Lord Gardiner of Kimble***

That the draft Regulations laid before the House on 1 March be approved.

Relevant document: 49th Report from the Secondary Legislation Scrutiny Committee

Motion agreed.

Administration (Restrictions on Disposal etc. to Connected Persons) Regulations 2021

Motion to Approve

6.02 pm

Moved by ***Lord Callanan***

That the draft Regulations laid before the House on 24 February be approved.

Relevant document: 48th Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, noble Lords may remember that the Corporate Insolvency and Governance Act 2020 revived a power to regulate connected sales in administration, which this statutory instrument uses. Now more than ever, we need a strong and robust insolvency regime to provide confidence to businesses, creditors and investors alike, particularly as we endeavour to rebuild the economy after the challenges it has suffered from the Covid-19 pandemic. The power enables us to strengthen the regime by imposing requirements where sales in administration are made to a connected person.

A pre-pack sale is where the sale of all or part of a company's business is arranged prior to it entering administration. The sale is then completed by an insolvency practitioner appointed as an administrator. This usually occurs on the same day or immediately after the company enters administration. Pre-pack sales are a valuable part of the insolvency landscape, representing around a third of all administrations. They can be a useful tool to rescue businesses, save jobs and preserve value. However, creditors are often

[Lord Callanan]
unaware of the sale until after it has been completed and this can cause concerns, particularly where the sale is to a connected person, such as a director or one of their family.

Previous criticism about whether pre-pack sales are always in the best interests of creditors led to a number of industry measures being introduced in 2015. The main aim of these measures was to increase the transparency of pre-pack sales. Key to this was the opportunity for a connected purchaser to seek an independent opinion from a new Pre Pack Pool, a group of experts able to provide an arm's-length view on the reasonableness of the transaction. Additional measures included strengthening professional standards for pre-pack sales.

There has, however, been a very low uptake of the use of the Pre Pack Pool. Each year, since its introduction in 2015, no more than 22% of connected purchasers have sought independent scrutiny of the offer. A government review concluded that pre-pack sales remain a valuable tool for business rescue, but that industry measures had not gone far enough in restoring creditor confidence. Consequently, the Government announced in October last year that they would regulate to strengthen the legislative framework in this area, principally by requiring an independent scrutiny of pre-pack sales where the sale involves a connected person. Draft regulations were published in October 2020 to seek stakeholders' views. I thank my noble friends Lord Hodgson of Astley Abbotts, Lady Altmann and Lady Neville-Rolfe, the noble Lords, Lord Vaux of Harrowden, Lord Mendelsohn and the noble Baroness, Lady Bowles of Berkhamsted, for their valuable contributions and useful discussions in developing the regulations further. The comments of noble Lords, along with those of other stakeholders, have been considered carefully and certain changes have been made to take account of the feedback received.

These regulations will mean that an administrator will be unable to make a substantial disposal of a company's assets to a person connected with it without either the approval of creditors or an independent written opinion. The requirements will apply to a disposal made to a connected person during the first eight weeks of administration. The meaning of a "substantial disposal" is defined in the regulations and the meaning of "connected persons" is set out in primary legislation. To prevent the requirements being circumvented, the definition of a substantial disposal includes sales which are carried out through a number of transactions and/or where these are to different connected persons.

The definition covers not only what would ordinarily be considered pre-pack sales, but any disposal made to a connected person within the first eight weeks of administration. This is to prevent the requirements being circumvented. The independent report must be provided by an individual qualified to do so within the meaning of the regulations and that individual is referred to as an evaluator. The administrator must be satisfied that the evaluator has the relevant knowledge and experience to provide the report. Requirements are also imposed on the evaluator in respect of their independence.

Following comments from stakeholders, the regulations have been strengthened and now require an evaluator to hold professional indemnity insurance to carry out the role. In practice, the role of an evaluator is likely to be fulfilled by certain professionals such as accountants, surveyors, lawyers and insolvency practitioners, along with members of the current Pre Pack Pool who meet the requirements to be able to fulfil the role. Depending on the nature of the disposal, other individuals who meet the requirements may also be suitable to act as an evaluator. The report provided by the evaluator must include a statement that indicates whether or not they are satisfied that the sale is reasonable.

A key concern of stakeholders was the risk of shopping around for a favourable opinion since there is no limit on the number of reports a connected person can obtain. We believe that the circumstances where someone would do this will be limited due to the cost implications and likely delay to the sale. However, in response to these concerns, changes have been made to the regulations to ensure transparency where more than one report is obtained. The evaluator will be required to include within the report the details of all reports that the connected person has previously obtained. If the connected person refuses to disclose a previous report or the evaluator believes that they are seeking to conceal the existence of such a report, that must also be set out in the evaluator's report. Once received, the administrator must consider the report, circulate it to all known creditors and file a copy at Companies House. If the evaluator's report states that they are not satisfied that the sale is reasonable, an administrator can still proceed where they consider it is in the best interests of creditors. If that happens, they must provide a statement to creditors setting out their reasons for doing so.

In conclusion, this statutory instrument will provide greater scrutiny of sales where they are to a connected person and give assurance to creditors that such a sale is appropriate in the circumstances. I commend the draft regulations to the House.

6.09 pm

Lord Mendelsohn (Lab) [V]: My Lords, I thank the Minister for his introduction of these measures. We are all very grateful for the efforts undertaken by the Insolvency Service and the Minister to deal with this issue, and for our interaction. I hope that he will take my comments and those of others constructively.

We share the view that pre-packs play a useful role, but the core issue is how to deal with abuses. At its simplest, we are most grateful to the Minister for the assurance that we will now be looking at this as a mandatory procedure. This has been the critical change which now provides the opportunity to cleanse the process of pre-pack administrations. We could have achieved the same objective with the Pre Pack Pool—I am not compelled by the issues that were outside it—but that has passed and we now must deal with the realities of the arrangements that have been suggested, particularly how effective they are.

I worry about the effectiveness of these regulations. We are not in the same situation as that with the monitors. I have tried for one business to get a monitor, using the existing legislation, and it is quite a difficult

process. The compulsion of making this mandatory will certainly create a different incentive, which is important. However, some of the changes made after the consultation are currently insufficient to make this work as effectively as possible or to deal with all the potential abuses. I would be grateful for the Minister's thoughts on these issues. It is important to acknowledge that the ability of a connected person to opinion-shop has been curtailed from the original proposals, but the Minister is yet to address the issues whereby someone gets something which is not a full opinion. It is advice, it is guidance, it is other things which contribute to making a pre-pack to a connected party that may be problematic, without informally becoming a full opinion. Such things are still excluded. It would be very useful if they were carried within the ambit of this to ensure that opinion-shopping was fully transparent and that those things which were not meeting the full test of an opinion were also included.

Many have concerns about the qualification requirements for the evaluator, but the Minister clearly specified the types of professions that this will extend to, not least because of the qualification that they must get professional indemnity insurance. This is probably a sensible approach. However, the Government were wrong not to look for a wider inclusion of secure lenders within the definition of connected persons. It is important to connect not only those who have voting rights but those outside that, who can exercise control without voting just by the very conditions. It is very important to ensure that this extends as strongly as possible. My first experience of how someone gamed a system irresponsibly was seeing how they used offshore-based debt vehicles to control a connected-party sale. That could continue, even under these requirements.

I feel very strongly that the responsibility for obtaining the opinion should be with the administrator, rather than the connected person. The arguments of cost, delay and the value of the connected person's information are all reasons why abuse is plausible and possible, and with the modern world of the digital economy, and the way business is conducted, some of the issues to get to creditors can be dealt with much more quickly. Therefore, that balance should be turned in favour of the administrator. It would help to cleanse the system very significantly.

Finally, the further definition of "substantial disposal" again does not fully cover what is necessary. The use of "significant" or "material" would be very easy, but "substantial" has a specific legal definition of size, which allows for arguments about proportionality. Again, you can parcel up a company as well. Given that this is a statutory instrument, can the Minister indicate what the review would do to ensure that this works as effectively as possible, and what further consideration might be given in the fullness of time to whether these measures can be tightened in the light of potential experience, or who will be responsible for ensuring that this has an effective regime to monitor and, if necessary, proposing some form of sanctions?

6.15 pm

Baroness Neville-Rolfe (Con): My Lords, I thank my noble friend the Minister for his explanation of these regulations, and for his courtesy and that of officials in meeting some of us to explain how thinking in this important area was developing. It is a particular pleasure to follow the noble Lord, Lord Mendelsohn, with his extensive practical experience.

One of the problems with insolvency law is that it is monumentally complex. I know this because I am a chartered company secretary and passed papers which tested me on the law in this area. The course taught me helpful and important lessons about a director's duties if a company was heading anywhere near insolvency. However, I confess that I do not fully understand all the minutiae of the law and I suspect that I am not alone in this.

Nevertheless, we are where we are, and I thank the Minister for recognising that pre-packs can have value: business is not interrupted, jobs may be saved and a good brand safeguarded, although conflicts have to be watched very carefully. This inherent benefit influenced the Graham report on the future of pre-packs in 2015. I have a lot of time for the common-sense expertise of Teresa Graham. She favoured a voluntary approach with a reserve power, so it is a little disappointing that the Government have now found it necessary to legislate, difficult though this is. The Minister has explained why he thinks this is needed.

A very important Graham recommendation was that there should be a Pre Pack Pool of experienced business people where, on a voluntary basis, details of a proposed sale to a connected party could be disclosed to an independent person prior to the sale taking place, thus giving greater confidence to creditors that the deal had undergone independent scrutiny. This pool has apparently not been much used and that is one of the reasons the Government have moved to a statutory system, with all pre-pack administration sales to a connected purchaser requiring an independent opinion from an evaluator on the sale.

The problem with this provision as now drafted is that the evaluator must only be independent, without obvious blemish on their record, and have relevant knowledge and experience; they do not have to have professional qualifications or be recognised in some other objective way. This moves away from the Graham notion of a Pre Pack Pool of people with knowledge of the industry exchanging good practice and intelligence, which might help to head off trouble. Has my noble friend considered the case for such a pool of evaluators? They could be explicitly recognised by the Insolvency Service, or some other body, and be encouraged to exchange experiences.

I should thank my noble friend the Minister for the progress made in consultation on these regulations. There is, however, a feeling among those I have consulted that he could usefully have made more changes to the consultation draft. Returning to my point about complexity, this is difficult stuff and it needs to be "work in progress", with changes to the regulations if the need arises. We also need an eagle eye for perverse effects and for those gaming the system—we heard from the noble Lord, Lord Mendelsohn, about his concern about opinion shopping.

Perhaps I could echo the noble Lord's final point on review; it would be very helpful if my noble friend could outline his plans for monitoring and evaluation and indicate when and how we might receive a review of progress on the new system. I was a little

[Baroness Neville-Rolfe]
disappointed by paragraph 14 of the Explanatory Memorandum on this point, given the importance and complexity of legislation on insolvency. For example, maybe something could, in practice, be done in the annual report of either BEIS or the Insolvency Service. But I support the regulations and thank the Minister.

6.19 pm

Lord Vaux of Harrowden (CB) [V]: My Lords, it is a great pleasure to follow the noble Baroness, Lady Neville-Rolfe. It was her amendment to the Corporate Insolvency and Governance Bill that allowed these welcome regulations to be tabled. During the debates on the Bill, I expressed some doubts that the Government would address the concern around connected party pre-packs, so I am delighted to be proved wrong and that the Government listened to the concerns that were raised. I am very grateful to the Minister for the time he has made available to discuss the regulations and to Paul Bannister and his team at the Insolvency Service; they have been very generous with their time and very helpful and open in their approach.

These regulations are very welcome and should help to improve the transparency around pre-pack disposals to connected persons. That said, a number of concerns remain. There are three matters that I want to raise, a couple of which have already been referred by the noble Lord, Lord Mendelsohn. First, the regulations do not prescribe any formal qualifications to become an evaluator. An evaluator has only to satisfy themselves and the administrator that they have sufficient relevant knowledge and experience, and must have professional indemnity insurance. I understand the reasons for this approach, which was, in part, to allow members of the pre-pack pool to continue to act as evaluators. The Government may have found an appropriate balance here, but I urge the Minister to keep this under review and to take action to strengthen the qualification requirements if it appears that underqualified people are taking advantage of the rather vague rule.

Secondly, there is opinion shopping, to which the Minister referred. This is when a connected person seeks reports from more than one evaluator but makes only the most favourable report available to the administrator. As the Minister said, the regulations have tried to address this risk by requiring that if the evaluator becomes aware that the connected person has obtained a previous report or comes to believe that the connected person may have obtained a previous report, they must include details of that report or if they have not been given it they must explain why and what steps they took to obtain it. However, the onus lies with the evaluator to find any previous report. If the connected person is not open about it, there is little the evaluator can do.

What is missing is an obligation on the connected person to provide any previous reports to the administrator or to state that they have not sought or obtained any such report. As the noble Lord, Lord Mendelsohn, pointed out, "sought" is important. It is easy to imagine a situation where a previous evaluator tells the connected person that they will not be able to state that the disposal is reasonable and is then asked by the connected person not to issue the formal report. The connected person can then honestly say that they have not had a previous report. The opinion-shopping problem still remains. It would have been better if the administrator was responsible for appointing the evaluator, at the cost of the connected person. That way, it would not be possible for the connected person to shop around for the most favourable opinion. However, we cannot amend that now, so I again urge the Minister to keep this under close review and to take action quickly should concerns about abuse arise in this area.

My last concern relates to the independence requirements for the evaluator and specifically the restriction set out in Regulation 12(1)(d) around providing advice to

"the company or a connected person."

A person is considered not to be independent if they have provided advice on insolvency or corporate restructuring matters only, and only during the last 12 months. As a comparison, to be considered an independent non-executive director under the corporate governance code a person cannot have had any material business relationship with the company, direct or indirect, within the past three years. I would be grateful if the Minister could explain why such limited restrictions are felt appropriate for an evaluator to be considered independent under Regulation 12(1)(d).

Finally, to aid my own understanding and, I hope, to be helpful to others, I ask the Minister to clarify one point. As I understand it, the time period for making these regulations expires at the end of June. If changes to them turn out to be required after that date, following a review of the matters already discussed, can they be made by further regulation or would primary legislation be needed?

6.24 pm

Lord Foulkes of Cumnock (Lab Co-op) [V]: My Lords, I too am grateful to the Minister for his, as usual, helpful introduction. Like him, I fear that we will be facing many more insolvencies—not just because of the pandemic, as he indicated, but as a result of the many problems arising from Brexit—so these regulations are timely.

I will confine myself to a few questions, which I hope the Minister can respond to in his reply. First, can he tell us whether all kinds of companies are covered by this provision? I understand from the Explanatory Memorandum that it extends to small businesses but are all types of businesses included? Specifically, will football clubs, some of which are currently in great financial difficulties, be included? As others have done, I also want to ask about the evaluators, who will be given significant responsibilities. As their trade body R3—as well as noble Lords in this debate—has said, it would be helpful to know what qualifications will be required to act as an evaluator. The Minister gave us some examples of professions but he did not describe what specific qualifications they should have. If, for example, they are businesspeople, will they be excluded if they have themselves been involved previously in an insolvency?

How will they all be assessed for honesty and integrity prior to their appointment? Why will there not be a central register of evaluators, or indeed a

body responsible for any training and registration and checking their operational effectiveness and reliability? Will the Government consider a register of approved evaluators being maintained by the Insolvency Service, as suggested by R3? However well qualified, an evaluator will not have the final say. If an administrator does not accept the decision of an evaluator that the "case is not made", all he has to do is "provide an explanation" to allow him to proceed anyway. Does this not make the evaluator's role effectively impotent?

The Minister helpfully reminded us that the definition of "connected persons" is described in legislation. However, how will the proposed procedure prevent some form of insider advantage being given to connected persons? Can the Minister also tell us how the interests of creditors will be balanced against speed in this procedure? Sometimes their interests can be forgotten in the apparent need for a quick resolution. Finally, and perhaps predictably, I want to ask about Scotland. Here, insolvency is partly devolved. Can the Minister tell us what discussions have taken place to ensure that these regulations are in fact consistent with Scots law, and can he give the House an assurance that this has been accepted by the devolved Administration?

Assuming that the Minister can give us all satisfactory answers, I agree with others that we should approve these regulations.

6.27 pm

Lord Hodgson of Astley Abbotts (Con) [V]: My Lords, I have been tracking pre-packs and the complications thereof for many years. I begin by adding to those of other noble Lords my thanks to my noble friend the Minister and, in particular, to Paul Bannister and the Insolvency Service, for the time they have given to many of us and the changes that have been made, which are certainly welcome.

Before I turn to the substance of the debate, I want to take one of my five minutes to address the Whip on duty. As I have already noted, I have a long-standing interest in this issue. I was in a business meeting in Stoke on Thursday afternoon when I received a call from the noble Lord, Lord Mendelsohn, to tell me that the debate had been tabled for today and that the speakers' list would close at 6 pm that evening. I was grateful to the noble Lord but horrified to find out he was correct. My Whip for the week arrived at 15.49 on Thursday, so, with a closing time of 18.00, I had precisely two hours and 11 minutes to read my email and put my name down to speak. I am afraid I have to say to the Whip on duty that that is not good enough. I would like them to take the matter up with the Chief Whip and to inquire how this happened and what will be done to prevent it happening again. If I do not get a reply, I certainly do not intend to let the matter rest.

I once again make it clear that, like other noble Lords, I do not oppose the principle of pre-packs. They are a very useful tool in the insolvency practitioner's armoury but, as we have said many times, in the hands of the unscrupulous they can too easily turn into a fraud on the creditors. The history of the Government's approach to pre-packs is of two steps forward followed by one step back. They have never quite been able to nail the issue down once and for all. In part, that is the story today: they do not quite close the door on the ruthless.

There are three issues: first, the failure to create institutional memory, which a mandatory reference to the pre-pack pool would have solved; secondly, there remains a concern, raised by several noble Lords, about the level of expertise required by evaluators despite the welcome requirement to have some level of professional indemnity insurance; and, thirdly, the definition of "connected persons", raised by the noble Lord, Lord Mendelsohn.

In connection with that, I invite my noble friend the Minister to reread the Explanatory Memorandum that accompanies the regulations. Paragraph 10.1, under the heading "Consultation outcome", says:

> "It is expected that many connected person purchasers will use the Pre-Pack Pool to obtain the independent opinion required by the instrument",

yet elsewhere paragraph 7.4 states that in 2019 only 23 out of 260 connected person pre-pack sales were referred to the pool, which is less than 10%. How can that possibly be a statement that has any real verification and expectation of being fulfilled? Paragraph 12.1, in the section entitled "Impact", states:

> "There is no, or no significant, impact on business, charities or voluntary bodies."

If that is really the considered view of the Government, what on earth are we doing sitting here today discussing it all? Meanwhile, the dangers of the new restructuring plan procedures introduced under the Corporate Insolvency and Governance Act, about which many Members of your Lordships' House raised concerns during the passage of the Bill, are becoming clearer.

I thank my noble friend for what he has done but I am afraid the battle is not yet won. As many noble Lords have said, we need to keep the matter under urgent review over the next few months as we emerge from the pandemic and pre-packs become a very familiar feature of the landscape.

6.32 pm

Lord Mann (Non-Afl): My Lords, on balance this statutory instrument seems to be an improvement worth supporting, although I am sure the caveats put very clearly and eloquently by my noble friend Lord Mandelson and the noble Baroness, Lady Neville-Rolfe, will have attracted the Minister's keen ear as things move on. I endorse the core points and arguments that they made and bow to their superior knowledge on the detail. I am sure the Minister will have been as persuaded as I was by their arguments.

I come back to the topic of the football industry. There are some interesting aspects in the detail, particularly the period of eight weeks in relation to the football industry. Something that has happened a lot over recent years is that, in order to fit with the rules in England whereby clubs have points deducted and are potentially relegated, there is a tendency for clubs to go into administration at the very end of the football season. Some suggest rather cynically that that is sometimes calculated on whether the points deduction will have a specific financial impact on the following season.

Football has another oddity, which is that for a long time now a club has been allowed its own preferential football creditors. HMRC lost its court

[Lord Mann]
case with Exeter City over this in 2012. Given the way that the football industry and its income streams work, there is a period between seasons—sometimes of 12 weeks but sometimes as low as 10 weeks—when clubs tend to be bought and sold. Does the Minister intend at any stage to look at the implications of the loss of that court case, and what it means for the industry and the stakeholders?

One thing that has happened repeatedly, particularly when one goes down the food chain into lower league and so-called non-league football, is that individual traders—for example, the joiner, the plumber or the printer—lose out on money when everyone else seems to be getting whatever money is around. Yet these are precisely the people who are most crucial, while living on very small margins. It can be the cleaner, the window-cleaner or the grasscutter who loses out, and it often is in this situation. Will the Minister take a closer look at this industry in the next year, the rules that it applies and some of the imagination that could benefit government?

One of the inevitabilities of the year-long lockdown or semi-lockdown is that some football clubs, particularly at the non-league level, will, when furlough ends, go out of business. We will see this problem occurring; that is very predictable. This is an industry that has a greater meaning, particularly to small towns, than most other industries or companies. This is about losing the identity of the local football club, because it no longer exists. We have seen football clubs almost disappear. Some have fought their way back, but in places such as Scarborough, Maidstone, Chester or Darlington we have seen them disappear out of mainstream football and very rarely bounce back. The impact on the community is very great. I put it to the Minister that it would be quite a wise investment of time to give the court case of 2012 and its implications, and the way in which these regulations will apply, a specific eye from Ministers during the next year in relation to the football industry.

6.37 pm

Baroness Bowles of Berkhamsted (LD) [V]: My Lords, other noble Lords speaking in this debate have more extensive knowledge of the history behind these regulations. Although, like many members of the public, I might have spotted a sale of a business to a connected person and wondered whether it was wholly fair, I became engaged with this only relatively recently: when the opportunity presented itself during the passage of the Corporate Insolvency and Governance Act and the noble Baroness, Lady Neville-Rolfe, revived the issue from the Small Business, Enterprise and Employment Act. Since then the noble Lord, Lord Hodgson, has kept an eagle eye on it. He has been keeping our impromptu group of CIG veterans informed since then.

In addition to the persistence of the noble Lord, Lord Hodgson, our little cross-party group has benefited from the varied professional expertise of the noble Lords the Minister referenced, and the noble Lords, Lord Mendelsohn and Lord Vaux, and the noble Baroness, Lady Neville-Rolfe, have ably demonstrated that in their contributions today. Like them, I am pleased that we have got to where we are, but I agree that this may be part of a continuing journey. I also thank the Minister for meetings and bringing forward these regulations. It is a quirk of the speaking order that I get to speak after those other noble Lords, which leaves everything already well covered.

These regulations introduce a new requirement for an opinion by an evaluator to say whether a sale to a connected party is "reasonable" in all the circumstances. This requirement will come into play frequently. As quoted in *Accountancy Age* last October, Blair Nimmo, the head of restructuring at KPMG, said:

> "When a company goes into insolvency and you need to have a fairly quick sale of the business, the person(s) with the most knowledge of a business and its operation are the existing directors. They are the most likely people to have arranged the pre-pack or at least be part of it, even if it is being funded or orchestrated by an independent party. Scenarios whereby there are zero connections to the previous directors are fairly few."

That was regarding pre-pack procedures, but evaluators will also come into play in any rapid—that is, within eight weeks—connected person sale through ordinary administration procedures.

I welcome the compulsory aspect of the report because the previous measure of consulting the Pre Pack Pool went greatly underused: as the noble Lord, Lord Hodgson, has already noted, there were only 23 referrals out of 260 connected person pre-packs in 2019. It is now envisaged that the Pre Pack Pool, or members thereof, might be used to obtain the independent opinion required, but it is already possible to find evaluators advertising online. Ones I found appeared to have relevant experience, and perhaps it is a nice job for retired insolvency practitioners, who were the ones that I found.

However, the main criticism levelled against the original proposal was the self-certification nature of the credentials of the evaluators: they need only believe that they have the requisite knowledge and experience to provide the report. That is now bolstered by the need for indemnity insurance, which presumably means that the insurance company must consider that they have the credentials to be an insurable risk—or that the person pays a high enough premium to persuade the insurance company to take the risk. The fact that the insurance premium details, including the insurer and the amount insured, must be disclosed adds to the reassurance, although I am still a little disconcerted with it as the mechanism.

There is still disquiet in some quarters and, as ever, time will tell. The noble Lords, Lord Mendelsohn and Lord Vaux, and other noble Baronesses and noble Lords, have already highlighted several of these—notably, opinion shopping is still not resolved. Secured lenders should perhaps be connected, as the noble Lord, Lord Mendelsohn, has suggested—the administrator applying for the evaluation would solve the opinion shopping point. I also note that the difference between "substantial" and "significant" may also need resolution in due course—as well as the relationship of the evaluator to the company.

That said, I am reassured—I think—in that I now understand that we have regulations which can be amended in future and, therefore, these issues may end up being resolved in due course. However, it would be nice to have the confirmation that the noble Lord, Lord Vaux, has indicated he would like—namely, that June is not the last say and now that the regulations exist, they can continue to be tweaked as more evidence comes to light.

6.43 pm

Lord Lennie (Lab) [V]: My Lords, as we have heard, this instrument proposes changes to address concerns about pre-packs. In the current context of the pandemic and a potential wave of insolvencies, we need to ensure that the regulations alleviate these concerns effectively. We have constantly pressed the Government to take action against the abuses that were occurring in pre-pack cases. There was a flurry of high-profile pre-pack sales last year, along with corresponding concerns. For example, it was reported that unsecured creditors of Monsoon Accessorize were owed more that £132 million after its founder bought it back out of administration in a pre-pack deal.

The Government have said that despite voluntary measures that were introduced for an independent review of pre-pack sales in 2014, there are still issues with transparency, so this instrument requires that if a person intends to acquire a business or assets from a company in administration and is connected to the insolvent company, they must seek an independent opinion from an evaluator on the purchase, unless creditors have approved the sale. The instrument also sets out certain requirements for the person acting as an evaluator, such as the need for indemnity insurance. It prevents a person from obtaining multiple evaluator reports—opinion shopping, as was said—in the hope that one might prove favourable.

The Government have said that

"the mandatory referral to an independent third party will provide creditors with greater assurance that such a sale is appropriate in the circumstances of the insolvency."

As we have heard,

"there's still some way to go if these reforms are going to improve stakeholder confidence in pre-pack administrations."

The trade body R3 has said that the legislation unfortunately risks critically undermining, rather than improving stakeholder confidence in pre-packs. Without ensuring the integrity of the evaluator involved by maintaining a list of approved evaluators, the Government will undermine confidence in the wider regulatory framework around pre-packs, effectively outsource responsibility for ensuring the suitability of the individual evaluators to the market and add unnecessary complication to business rescue efforts.

R3 also said that

"there is no framework in place to ensure qualifying criteria for the Evaluator position are being met."

Can the Minister explain why this is the case? Does he believe that the new requirement for an evaluator to have a professional indemnity will be sufficient to secure the confidence of the wider business community?

The regulations also place a new requirement on administrators who must be

"satisfied that the individual making that report had sufficient relevant knowledge and experience to make a qualifying report."

This means that the administrators will effectively be charged with ascertaining the suitability of individual evaluators. What happens if the evaluator may be purposefully or successfully misleading? If there is not a central register of evaluators, to whom does an administrator complain if they have been misled? How can inappropriate evaluators be reported and to whom should they be reported?

The British Property Federation has said:

"It is … disappointing that the regulations allow a sale to proceed despite a negative opinion. A negative opinion should mean the sale cannot proceed."

Why have the Government not taken this approach? Where the case is not made, an administrator will still be able to proceed with the sale to a connected person but will need to provide an explanation of why they have proceeded. What should be included in this explanation of allowing the sale? Have the Government considered maintaining a list of approved evaluators? How will the Government ensure that all evaluators have relevant business experience to give an opinion on whether a case has been made by an individual or connected party for pre-pack sales?

The government report from last October said:

"The government does not, therefore, propose that the power to ban connected party sales in administration should be used."

Can the Minister say how this conclusion was reached?

We need clarity in these regulations about how they work in practice, especially if the withdrawal of government Covid support results in a wave of insolvencies and the increased likelihood of pre-pack deals. We are grateful in this House to have the knowledge and experience of the noble Lords, Lord Mendelsohn, Lord Hodgson and Lord Vaux, and the noble Baroness, Lady Neville-Rolfe, in this area. We need clarity across the piece.

6.48 pm

Lord Callanan (Con): I thank all noble Lords for their valuable contributions to this debate. Yet again the House has shown the great value of the experience in this area with some very valuable and well-thought-through contributions. I say to my noble friend Lord Hodgson that I had no say in the timings of the debate, but I know that the noble Baroness, Lady Bloomfield, has taken careful note of his comments and will reply to him directly about the timescales.

Pre-pack sales are of significant interest in our economy and this is reflected in many of the comments made today. They are a valuable rescue tool where a company in financial difficulties has underlying value and is potentially viable. This is particularly relevant in the current economic climate, with many businesses struggling with the impact of the pandemic. Having a range of rescue vehicles for viable businesses within the insolvency framework will aid the recovery of our economy.

The power under which these regulations are made would potentially have permitted regulations to be made banning pre-pack sales to connected persons completely. It was clear from the government review of the 2015 industry measures that stakeholders believe that the opportunity to pre-pack a business to a connected person should be preserved.

[Lord Callanan]

In some circumstances, the business only has value to those connected to the insolvent company and a pre-pack sale is the best way to preserve that value for the creditors. However, it was recognised that there needs to be a stronger regulatory framework to prevent the risk of abuse for creditors.

The Government consider that these regulations will provide the additional safeguard and transparency of independent scrutiny while still enabling the rescue of viable businesses through a pre-pack sale. Let me assure the noble Lord, Lord Mendelsohn, that, subject to parliamentary approval of this statutory instrument, the Government will monitor its implementation to see how the regulations operate in practice. We will also provide guidance to assist connected persons, evaluators and administrators to understand their responsibilities under these regulations. In addition, we are working with the industry to strengthen professional standards for pre-pack sales.

The legislative and non-legislative changes will be monitored together to see whether they meet the objective of improving transparency and creditors' confidence. If there is evidence that problems persist or that new issues have arisen, the Government will consider whether further changes are needed, including whether pre-pack sales should be banned altogether. Likewise, if there is evidence that the regulations are impeding legitimate rescue attempts, we will consider whether further adjustments are needed. As the economy and businesses strive to recover from the impacts of Covid-19, it is important that we have flexibility within our insolvency and restructuring framework. This will allow companies in financial distress to find the right mechanism to best help their particular circumstances, while balancing the needs of those affected by the insolvency to ensure that they are treated fairly and have confidence in the process.

With the time I have remaining, let me deal with a number of the questions that were asked. The noble Lords, Lord Mendelsohn, the noble Baroness, Lady Bowles, and my noble friends Lord Hodgson and Lady Neville-Rolfe, all asked why we did not mandate opinions from Pre Pack Pool; indeed, many noble Lords have asked me about this separately. The reason this did not prove possible is that it is a private limited company, so there are wider legal implications—both under competition law and in the scope of the regulation-making power—for seeking to make a single private company a monopoly provider of authorisations to take certain steps under insolvency law.

The noble Lord, Lord Mendelsohn, asked why the regulations do not define what is meant by "substantial" and whether there will be guidance on this matter. Since what constitutes a substantial sale may be different in any given case, depending on the nature of the business, this has been left to the administrator's judgment. "Substantial" is used elsewhere in insolvency legislation, so administrators are used to making this type of judgment in the normal course of their duties. However, examples will be provided in guidance as to what may constitute a substantial sale in a particular case to aid the administrator. Also, on using "significant" or "substantial" in the definition, "substantial" is used elsewhere in insolvency legislation, so insolvency practitioners are already familiar with the term. However, again, we will monitor the impact.

The noble Lord raised the issue of secured lenders. Some secured lenders will potentially be caught by the definition of "connected persons" where they are entitled to exercise more than one-third of the voting rights. As with all good provisions, we will of course keep this under review.

The noble Lord also asked why the regulations do not make the administrator responsible for obtaining a report at the connected party's expense. As the vast majority of pre-pack sales are arranged prior to an administrator's appointment, with the sale completed on day one, placing a requirement on the administrator to be responsible for obtaining the opinion would cause a delay to the sale, which would increase costs and potentially hinder the business rescue.

My noble friends Lady Neville-Rolfe and Lord Hodgson, and the noble Lord, Lord Mendelsohn, asked whether we intend to review these regulations when they are in force. As I said earlier, we intend to monitor the implementation of this SI and will consider modifying or supplementing its provisions in the future if it proves necessary to do so. We will work with the insolvency regulators, professional bodies and opinion providers that are implementing the regime to work out whether any changes are necessary.

A number of noble Lords—my noble friend Lady Neville-Rolfe and the noble Lords, Lord Vaux, Lord Foulkes and Lord Lennie—asked me about a list of approved providers or evaluators. The Government take the view that this would be an unnecessary administrative burden on government at a time when public resources and expenditure are under severe pressure. A person whose knowledge and experience are suitable in one context might be unsuitable in a different context. A list would not therefore remove the need to consider whether a person's knowledge was sufficient on a case-by-case basis.

The qualification requirements for evaluators was raised by the noble Lords, Lord Vaux, Lord Foulkes and Lord Lennie. As I said earlier, the administrator will need to be satisfied that the evaluator has sufficient knowledge and experience to produce the report and meet the other requirements of the regulations. Guidance will be provided for administrators to help them meet those conditions. We recognised where there were stakeholder concerns about this issue and subsequently strengthened the regulations by including a requirement that the evaluator hold professional negligence insurance.

The noble Lord, Lord Vaux, asked about the requirement for further reports and a potential penalty. There would be difficulties in introducing new penalties via the regulations and we have aimed to take a proportionate approach. The noble Lord asked also why the restriction on providing previous professional advice is limited to 12 months. A three-year restriction might impact the number of available suitable individuals able to provide an opinion, so is too long a period. We consider that 12 months is appropriate.

The noble Lord, Lord Foulkes, the noble Baroness, Lady Bowles, and other noble Lords asked about timing. Assuming that Parliament approves these regulations, it will be possible to amend them post the prior primary power sunsetting, so, yes, we can come back to them in the future even if the original primary power has sunsetted.

The noble Lords, Lord Foulkes and Lord Lennie, asked why the regulations allow the administrator to proceed with a sale if the evaluator provides an unfavourable report. I dealt with this in my opening remarks. The regulations provide a specific role for the evaluator which is confined to the provision of the report and determination of whether the grounds and the consideration to be provided for the sale are reasonable. The administrator is an officer of the court and has a statutory duty to act in the best interests of creditors as a whole.

The issue of Scotland was raised, as usual, correctly and appropriately, by the noble Lord, Lord Foulkes —it allows me to make a comment also about the other devolved Administrations. All the devolved Administrations have been informed of the intention to regulate, and officials have kept closely in touch with devolved colleagues on the proposals. If these regulations are approved by Parliament, they will apply in England, Scotland and Wales. An equivalent power to regulate connected persons sales in administration for Northern Ireland was created by the Corporate Insolvency and Governance Act 2020.

The noble Lord, Lord Mann, raised Football Index and Exeter City Football Club. We recognise the serious concerns of Football Index customers about these developments and the worry that will have been caused. I understand that the Gambling Commission has been investigating this company for some time and has suspended the operator's licence while it continues. The Secretary of State for Culture and the Minister for Media and Data have met the Gambling Commission twice in the past fortnight to discuss this issue and have requested and received urgent updates. The noble Lord will understand that I cannot comment on an ongoing investigation, beyond saying that we are closely monitoring the situation.

The noble Lord, Lord Lennie, asked about banning pre-pack sales. I dealt with that earlier; it is possible we might come back to this in future if it proves not to be working. The noble Lords, Lord Vaux and Lord Lennie, raised the issues of the evaluator being a regulated professional and of how creditors can be assured that the report has been produced by someone with suitable skills. The regulations require that the individual providing the report should have professional indemnity insurance cover, as I said earlier.

I think I am out of time; I apologise to noble Lords whose questions I have not answered. If necessary, I will come back to them in writing. In conclusion, I believe that, by strengthening the legislative framework for sales to connected persons in administration, these draft regulations meet the challenge set for us. I therefore commend them to the House.

Motion agreed.

The Care Planning, Placement and Case Review (England) (Amendment) Regulations 2021

Motion to Take Note

7.01 pm

Moved by ***Lord Watson of Invergowrie***

That this House takes note of the Care Planning, Placement and Case Review (England) (Amendment) Regulations 2021 (SI 2021/161).

Relevant document: 47th Report from the Secondary Legislation Scrutiny Committee (special attention drawn to the instrument)

Lord Watson of Invergowrie (Lab): My Lords, these regulations are the subject of a take-note Motion today for two reasons: first, due to the concerns expressed by the Secondary Legislation Scrutiny Committee in drawing the regulations to the special attention of the House over the need for the Government to introduce the additional protections for older children, to which they have committed, at the earliest opportunity; secondly, because we are extremely concerned by the decision contained in the regulations to prohibit the use of unregulated accommodation only for looked-after children aged 15 and younger, and not for children aged 16 and 17.

The regulations follow a DfE public consultation, begun in February last year, on regulating semi-independent and independent accommodation for children in care and care leavers. It appears to have been stimulated by the shocking revelations contained in the BBC "Newsnight" report, "Britain's Hidden Children's Homes", in 2019.

Children's homes should be a safe haven, but a decade of Conservative local authority cuts and poor regulation have left far too many children at risk of neglect and exploitation. The Government should have acted to protect children from increased threats during lockdown, but instead Ministers used the pandemic as an excuse to water down their rights—action which the courts subsequently found unlawful.

Now the DfE is about to consult on national standards for unregulated accommodation for 16 and 17 year-olds in care, intending that it should become regulated via an Ofsted-led registration and inspection scheme, though there has as yet been no indication what that might look like. The consultation did not mention that these standards would have to omit any requirement to provide care to 16 and 17 year-olds. However, that is what will happen, because establishments which provide children with care and accommodation must register as children's homes and be inspected by Ofsted.

These regulations formally create a two-tier care system, which could lead to a situation where provision to children is based on age rather than need. In effect, it will reduce the leaving care age to 16. It might be imagined that the meaning of the legal term "in care" was beyond doubt, yet these regulations will legitimise the absence of care for 16 and 17 year-olds who are, I repeat, in care.

[Lord Watson of Invergowrie]

Six months ago, the Children's Commissioner published a report on children in care living in unregulated accommodation that reiterated concerns about vulnerable children being exploited and abused. The commissioner recommended that the use of semi-independent and independent provision should be made unlawful for all children in care, stating unequivocally:

"No child under the age of 18 should be placed in an unregulated setting. All children aged under 18 should receive care, rather than support. As such, there should be a requirement that any setting they are placed in is regulated as a children's home."

Those are words that we fully and enthusiastically endorse. It would be instructive if the Minister would reveal the DfE's view on which looked-after children it believes are able to manage without care; does it consider that an absence of care is legitimate for those children for whom a family court has made a care order? Further, in relation to the department's assessment of how the under-16 ban may affect children aged 16 and 17, has the department undertaken equality and/or child rights impact assessments?

There is also the vital question of the safety of these young people, not an issue of which the DfE is unaware. Two months ago, in response to a freedom of information request by the children's rights charity, Article 39, the department published data on children who have died or been seriously harmed following abuse or neglect within the family or other settings in what are termed "serious incident notifications". These numbers may seem small in relation to the 6,480 16 and 17 year-olds recorded in March 2020 as living independently or semi-independently, but even one such case, be it harm, far less a death, is one too many. It is important to stress that under international law, a person under the age of 18 is regarded as a child. The same law pertains in this country.

As the Secondary Legislation Scrutiny Committee report points out, 73% of unregulated settings are privately run; that is to say, for profit. They are private companies doing very well out of vulnerable children without the checks and balances that are seen in other care settings. The financial opportunities available can attract entrants to the market with little or no knowledge of children's care, with the result that in some settings, children are not kept safe. A number of children's charities are capable of delivering, perhaps in conjunction with local authorities, proper care to 16 and 17 year-olds, were they not priced out of the market. I am not alone in believing that the care we are considering today is too important to be left to the vagaries of the market, but I know that the office of the new Children's Commissioner is keen to explore that possibility with children's charities. Will the Minister say whether the DfE will offer encouragement to them in such an approach?

The DfE maintains that there is a place for independent and semi-independent provision where it is of high quality and that such a placement is desired by the older child and would be consistent with their welfare. However, the evidence shows that these conditions are rarely met. As the Children's Commissioner commented in the report to which I referred earlier, even the very few 16 and 17 year-olds who feel that they are ready to start becoming more independent are likely at some point to require assistance that meets the threshold for care rather than support, as the coronavirus crisis has demonstrated.

Anne Longfield also registered her particular concerns about the lack of resources available to many local authorities, which has caused a lack of sufficient places across the whole system. These issues were highlighted by the committee in its report, which said

"there is a risk of low-quality provision given the significant financial pressures on many local authorities and the considerable costs of high-quality support for children."

The Government have just launched an independent review of the children's social care system. It is essential that the review understands and addresses why increasing numbers of children are being placed in unregulated settings. I hope that it will conclude that every looked-after child should have the legal right to receive care until at least their 18th birthday.

Two weeks ago, it was announced that the Competition and Markets Authority is to undertake an inquiry into the supply, price, commissioning and regulation of children's homes, fostering and unregulated accommodation placements, along with the environment for investing in services. Apparently, one of the questions it will consider is whether profits for private providers are at the expense of quality of care in the children's social care market. That certainly is a question worth asking, although it does seem rather strange that the inquiry will take place in parallel with the independent review of children's social care that has just begun. Can the Minister say how, if at all, the two might support each other?

In closing, I want to ask what the Minister and her department intend to do in respect of the five recommendations made by the Children's Commissioner in her report last year. I have mentioned the questions of independent care for those aged under 18 being made illegal and the need to ensure quality for young people in unregulated settings. In addition, Anne Longfield called for urgent action to increase the capacity of care across the system, which is a fundamental issue. However, it comes down to an increase in resources, and for the Minister to point out, as I suspect she might, what has already been spent or committed is not enough. Considerably more resources must be made available to ensure adequate care and it is to be hoped that the independent review will not be constrained in its recommendations by an expectation that it can bring about substantial change within existing resources. That is not just a pipe dream—it would be a major failing of young people in care, whether they are above or below the age of 16. The committee's report said

"we urge the House to seek assurance from the Minister that any legislation needed to introduce the additional protections for older children to which the Government have committed is introduced at the earliest opportunity."

I now invite the Minister to do that and I look forward to her response. I beg to move.

7.10 pm

Lord Russell of Liverpool (CB): My Lords, first, I thank the noble Lord, Lord Watson, for initiating the debate on this statutory instrument. I am afraid that I will probably stray across some of the same ground that he has, but the theme to which I draw attention is

one that I raise with monotonous regularity with the Minister's colleague, the noble Baroness, Lady Williams, in the Home Office. It is the need for accurate, timely and informative data, so that one knows what on earth one is doing. You need data to understand the past and present and, above all, to inform decisions you will make about the future.

In that spirit, I have forwarded every single briefing document that I have received to the Minister's office. I suspect and fear that, in many cases, some of the data and testimonies that come from the front line, from some of the voluntary organisations that have briefed us, are far more incisive, accurate and up to date than the department's data. That theme tends to recur in this area.

As the noble Lord, Lord Watson, said, we are indebted to Anne Longfield for her report of last September, a lot of which is shocking. It is shocking partly because she had to go and collect the data to inform her report, because it was not readily available. On page 4, she said that

> "The Department for Education commissioned a research report looking at some issues, based on data analysis and interviews with 22 local authorities."

The point I make is not that that was a bad thing, but that the department did not already know that information, which is why it was done. That is part of the problem. She found that the number of children living in unregulated accommodation has been increasing, year on year, since 2015. That is not a great surprise; the surprise is why the department was not on top of that data and tracking it year by year, or even month by month. I do not understand that.

Anne Longfield's report lifts the lid on the unregulated accommodation sector, estimated to be worth about £1.6 billion per annum. As the noble Lord, Lord Watson, said, almost three-quarters of it is privately owned, up from two-thirds in 2013. So it has gone up from 66% to 73% privately owned in just six years, and the possible profit margins are extraordinary. There were some cases listed where local authorities were being charged £9,000 a week for a 16 or 17 year-old child.

I do not know whether the Minister was watching television on Saturday evening, but Sky had a documentary called "Lost in Care", about what we are discussing. It is totally congruent with Anne Longfield's findings. As I was watching the documentary, which in particular has the detailed testimony of three young people who went through unregulated care—it is quite shocking—I thought of my naive 16 or 17 year-old self and how I would have coped an awful lot worse than those three children did at the time. It was rather shocking. Towards the end of the documentary, the new Children's Commissioner, Dame Rachel de Souza, was shown the evidence by the reporter and asked what she thought about it. She was clearly genuinely shocked and basically said that this is unacceptable; something has to be done. That is what we are discussing here.

As the noble Lord, Lord Watson, has done, I want to recollect the five very clear recommendations that Anne Longfield made in her report. I have given notice that I would do that, and I am hoping and expecting that we will have a comprehensive answer from the Minister to each of them. After all, the report did come out six months ago.

The first recommendation is that no child under the age of 18 should be placed in any setting not regulated to children's home standards, whether they are in care, homeless or unaccompanied asylum seekers. The second recommendation is to increase capacity in the care system, which is a key problem that local authorities are constantly faced with. One of the unintended consequences of this statutory instrument is that it has effectively—quite unintentionally, I am sure—sabotaged the Children's Commissioner's attempts to work with a variety of the major children's charities, such as Barnardo's, and with some of the more enlightened best-practice local authorities, which are very keen to get into the market themselves and to supply really good accommodation to the best possible standards.

Unfortunately, that work has ground to a halt. Why? First, local authorities and charities cannot compete with the private sector on the basis that it is currently unregulated and because of the fairly minimal regulations that the Government are proposing to put on to the statute book. Quite frankly, unless the Government come up with higher minimum standards—namely, ones that those local authorities and charities such as Barnardo's could live with, with a clear conscience—they are not going to be able to compete with the private sector on cost. Secondly, as I said, under the current regulatory framework they will not in all conscience set up these homes that they would like to, because they cannot do it and would fail their own standards of care. Lastly, because of those two interlinking points, it is impossible to go to the market to raise finance to try to build expansion in this sector, because of the uncertainty created by what the Government have decided in the statutory instrument.

The third recommendation is:

> "Clarification of what care looks like for children".

Anne Longfield recommended that the Department for Education shape a comprehensive illustration—a description—of what care should look like right the way through to age 18. I would like to know whether that is in hand, about to be in hand, or if it is on the back burner, and when and if we can expect any action.

The fourth recommendation is to do with the "Regulation of unregulated settings". The worry is that if the statutory instrument is carried out and its standards applied, they will become de facto the norm for many local authorities that are strapped for cash—that will be the automatic decision taken when they are trying to place a child, which they have a statutory duty to do. I do not think that this is what the Government intend, but that is what the sector fears will happen.

The fifth recommendation is to strengthen the role of independent reviewing officers. These individuals are between a rock and hard place: they work for the local authority—they are employed by it—but they are there to act in the best interests of each and every child in a situation such as being in care and needing to be placed. You have a cash-strapped employer basically saying, "Go for the easiest and cheapest option that ticks the box in terms of our statutory requirements, and don't get prissy about it", which puts any independent reviewing officer who has a conscience, and is putting the interests of the child

[Lord Russell of Liverpool]
first, in a really impossible situation. The recommendation from Anne Longfield was to look at this and what the Government can do to strengthen the autonomy and independence of these vital people to act in the best interests of the child.

What is common across all those five recommendations is that a lot of this is informed by insufficient data; a lot of it is unknown. We know there is a problem but we do not know the real nitty-gritty and detail because we do not have the data. The department is about to navigate its way through the spending review, it has the CMA investigation into children's residential care, as well as the social care review, so there is a huge temptation to say, "There is lots to be done; let's wait and see what comes out of it and then we'll decide"—remarkably like the Domestic Abuse Bill which we have just been through. Please can we not use that excuse, and try to plan strategically what we can do? I am coming to an end. What are the options to increase supply of accommodation? How can we develop new commissioning models, present targeted capital funding applications, and identify and disseminate best practice models?

7.21 pm

Baroness Tyler of Enfield (LD) [V]: My Lords, I thank the noble Lord, Lord Watson, for securing this debate. I declare an interest as a board member of Social Work England and I thank the various children's charities for their helpful briefings.

I welcome the decision to ban unregulated placements for all children under the age of 16 but I agree with the vast majority of the sentiments expressed by the noble Lords, Lord Watson and Lord Russell. The regulations represent the absolute bare minimum of what is needed and in that respect are deeply disappointing, most particularly the decision not to include 16 and 17 year-olds.

Since 2013, there has been an 83% increase in the number of teenagers in care living in unregulated accommodation. Media stories have highlighted shocking cases where children as young as 12 were placed in tents, caravans and canal boats due to a shortage of suitable provision. However, the majority of media investigations and serious concerns expressed about looked-after children in unregulated accommodation relate to those aged 16 and 17.

Shockingly, as we have heard, the 2019 investigation by BBC "Newsnight" into "Britain's Hidden Children's Homes" revealed a 17 year-old young man killed in supported accommodation in 2016. His death exposed the lack of information-sharing between local authorities and the paucity of provision for very vulnerable young people. A young woman reported having to use her coat and blanket as a duvet and being "freezing cold" in supported accommodation. She was moved from a foster home, where she was happy, to accommodation late at night. Her bedroom was downstairs; there were no curtains and no bedsheets. She felt desperate and very alone. Another young woman felt "dumped and alone" in supported accommodation; she became depressed and anxious for the first time. Other young people in her accommodation used drugs and drank alcohol in their rooms; this young woman had never experienced this before and found it all "a massive shock".

What additional funding, if any, has been made available to local authorities since 2019 in the light of these revelations to help them fulfil their duties under the Children Act 1989 to provide looked-after children with accommodation in their area which meets their needs?

To do the bare minimum is not good enough when making provision for some of the most damaged and vulnerable children in our society, for whom the state has taken on the role of corporate parent. A good corporate parent should act as in the same way as a loving parent would do and should have the same aspirations for that child or young person. The critical question to be asked is therefore: "Would that be good enough for my child?" When looking at these regulations, the short answer is no.

As we have heard, the Children's Commissioner's report from Anne Longfield in 2020 was both powerful and truly shocking, exposing children in unregulated accommodation as some of the most forgotten and vulnerable children within the entire care system. Anne Longfield found that a "significant proportion" of unregulated accommodation was of "very poor quality", and reported children suffering violence and hunger, accommodation which lacked basic facilities—such as cutlery, pans and duvet covers—and children being exposed to criminal and sexual exploitation. Children aged 16 and 17 frequently lived alongside vulnerable young adults, often up to age 25, battling with their own difficulties—including those struggling with homelessness, mental ill-health, addiction or even transitioning from prison back to the community. For too long children have been placed in this inappropriate accommodation as the sector has gone unchecked, with some providers making large profits on running substandard accommodation with little to no support.

My starting point is that the Government should ensure that no child under 16 is placed in unregulated accommodation, regardless of which piece of legislation they are housed under. All settings that house under-18s should be regulated, provide age-appropriate care as well as support, and be inspected by Ofsted. This includes independent and semi-independent settings. I can see no room for half-measures or compromises here.

As we have heard from the noble Lord, Lord Watson, in January 2021 the DfE published data on children who have died or been seriously harmed following abuse or neglect within the family or other settings, called serious incident notifications. A freedom of information request revealed that four children aged 16 and 17 died and three children aged 16 and 17 were harmed in semi-independent accommodation between April and September 2020. Will the Minister write to me to provide information on the circumstances in which those four children died and three were harmed? How many serious incident notifications have there been over the last five years in respect of looked-after children in independent and semi-independent provision?

All children, including unaccompanied children seeking asylum and homeless 16 and 17 year-olds, deserve and need both care and support. This should be based not

on arbitrary age thresholds, but rather on children's needs and wishes, including a recognition that children's needs evolve and change over time. Teenagers in care are six times more likely compared to children under 13 to be living in residential or secure children's homes, and while residential care is right for some children, it is surely critical that the Government commit to investing in family-based options for teenagers. With the continuing rise of older children coming into care, more options are needed—including foster care—as demand is far outstripping supply, which has resulted in the increased use of unregulated accommodation in past years.

What are the Government doing to ensure that placement decisions, whether foster care or supported accommodation, are based on an assessment of a young person's needs and wishes, and not solely on the basis of their age? What are the Government doing to ensure that, in outsourcing accommodation provision to the unregulated sector, private providers are aware of and local authorities remain committed to upholding the welfare of all the children they accommodate?

I was very pleased to read last week that the new Children's Commissioner, Dame Rachel de Souza, expressed in unambiguous terms her support for banning unregulated care for 16 and 17 year-olds, adding:

> "We have to make sure that all children and young people in care are in a situation where they can flourish, and they can be supported. It's our absolute top priority."

I am sure that the new commissioner will be a fearless campaigner on this issue, and I wish her every success.

We know that local authorities are trying to increase capacity in the 16 to 18 sector, and children's charities are looking to enter or expand in this market. But they cannot compete with the private sector on a cost basis without a proper understanding of the quality standards or the funds to finance it.

We clearly need more voluntary sector and good-quality private sector provision in the market, and the Government need to take action to stimulate the market and ensure that providers adhere to quality standards. Surely the Government need to consider this afresh. There are opportunities to do so over coming months, with the spending review coming up, the Competition and Markets Authority's investigation into children's residential care, and the children's social care review. The care review will need to address the funding available to local authorities to meet the growing numbers of children entering care, the reasons for the increase and whether care is the most appropriate response to some older children's needs. The critical backdrop to this review is that councils have experienced major budget cuts since 2010, and in 2018-19 they overspent their budget for children's social care by some £770 million. A significant programme of investment is urgently needed and could be announced in the spending review.

As things stand, some of the country's most vulnerable teenagers are being housed in accommodation that is barely fit for human habitation, without the protection, care and support they need to lead happy lives. It is a scandal, and one that should not be allowed to continue for a minute longer.

7.29 pm

The Parliamentary Under-Secretary of State, Department for Education and Department for International Trade (Baroness Berridge) (Con): My Lords, I thank the noble Lord, Lord Watson, for tabling this debate, and I welcome the opportunity to discuss the Care Planning, Placement and Case Review (England) (Amendment) Regulations 2021 and the use of unregulated independent and semi-independent provision for children in care and care leavers. As someone who lived independently at the age of 16, it is something that I have personal experience of. I also thank the Secondary Legislation Scrutiny Committee for its detailed examination of the regulations. I will deal with the five points raised by the former Children's Commissioner during my speech, but there will be points at which noble Lords will recognise that the Government digress from her recommendations.

I am sure that noble Lords who have spoken know that every child deserves a place to live, where they feel safe and secure and receive the care and support that they need to thrive, enabling them to achieve the best possible outcomes in life. This is equally important for children in the care system, who have often had a difficult start to life. The statutory duties are very clear on local authorities. They must make individual placement decisions in relation to children based on their best interests, while considering their stated wishes. Having dedicated foster carers, excellent children's homes and high-quality independent and semi-independent settings for older children who are ready for it is critical to this endeavour. We need a range of options for care placements and support that reflects the diverse needs of children in care and care leavers. There is no intention to change the position that children can leave care, or voluntarily come into care, at the age of 16, and make it a default provision for children over the age of 16.

Noble Lords have highlighted the former Children's Commissioner's call to increase the number of placements for children. As the noble Lord, Lord Russell of Liverpool, stated, we are investing capital of £24 million in the estate for secure children's homes, which is a tiny part of this provision but a very important one. We are also developing plans to support local authorities to create more children's home placements through additional investment.

Noble Lords have also rightly highlighted the need for local authorities to have a range of placement options to meet the needs of children that they look after. We have also invested part of the £200 million children's social care innovation programme on improving commissioning and capacity of residential care, as well as funding seven fostering partnerships to improve local commissioning. These projects will boost the development of best practice, as outlined by the noble Lord, in commissioning and sufficiency planning to be shared nationwide. This will be critical in ensuring that local authorities can learn from the best to deliver their statutory duties that I have outlined.

While a placement in independent or semi-independent provision can be the right option for some older children, where it is high-quality and meets their needs, it is never right for those under the age of 16. These settings are simply not equipped to meet their needs or

[Baroness Berridge]
keep them safe. Children of this age should be placed in children's homes or foster care, which is why we have laid these regulations that will ban the practice of placing children under the age of 16 in unregulated independent and semi-independent settings from September. The department will be working closely over the coming months with those local authorities most impacted by the introduction of the ban.

However, on the recommendation by the former Children's Commissioner to ban this for under 18s, this is where the Government do not agree. We have more older children in the care system and coming into the care system at an older age. We must ensure that there is an option to facilitate development of their independence as they prepare for adult life and leaving care, something that she highlighted in her report. We know that there is good independent and semi-independent provision where local authorities are making careful decisions in meeting the needs of the children that they look after. We have also seen good examples, such as where young people are placed in shared housing with 24/7 support, or supportive lodgings where they live with a family and receive support and advice but are afforded freedoms such as cooking and cleaning for themselves and getting themselves to work, education or training, all of which are important skills to learn. Of course, 16 year-olds can be care leavers and opt into those kinds of arrangements if that is assessed to be best for their needs.

We know that these settings are often used for young people who are, for instance, remanded into local authority accommodation when a placement back with their family, or in a children's home with other children, or foster care, would not be appropriate. This is in the best interests of the young people in a small number of difficult cases, and we obviously do not want to curtail the ability of the courts to make such an order for children, which means they are on bail rather than on remand. They can also be the best option to meet the needs of older children who have come into care much later and do not want to live in a family-based environment any more. This is sometimes the case, particularly for unaccompanied, asylum-seeking children who have come independently to this country and do not want to be placed in a family environment. We also have a certain number of voluntary care leavers aged 16 who have voluntarily left their family situation and do not want to be accommodated in a family situation again. That is a very sad situation to have to deal with.

Local authorities must take the views of these older children into account. It is crucial that local authorities can facilitate this type of placement for older children when they are ready for it. If they have not reached the stage in their lives—whether they are 16 or 17—where this type of setting could meet all their care needs, they should be placed in a children's home or in foster care. The decision is about what is in the best interests of the children.

The Government recognise the concerns, outlined by all three noble Lords who have spoken and also raised by the committee, that some independent and semi-independent accommodation is low-quality, as highlighted by various media reports. We agree that we must do more to improve this, and that is why we will introduce national standards. These will not be minimal. This is the same type of regime that regulates schools, boarding schools et cetera. It will be an Ofsted-led registration and inspection regime for settings that accommodate 16 and 17 year-olds; we are doing something about this. We will consult on this shortly, and I hope that noble Lords will respond to that consultation. This will not be symbolic; it will introduce proper standards for this accommodation group and will, hopefully, assist with wider provision.

We welcome the valuable information that we will get from the Competition and Markets Authority report that noble Lords also mentioned. I will write the detailed letter to the noble Baroness, Lady Tyler, that she asked for.

It is important that all these decisions are based on the best data. We have issued two further datasets in relation to this type of accommodation, as well as the qualitative research we released earlier.

I reassure noble Lords that we have received strong support for these reforms, including from the young people whom we have consulted. Over 70% of respondents to the consultation agreed that an Ofsted-led quality and inspection regime would best support this. The Government look forward to working closely with the sector, and care-experienced young people, to design the new regime of national standards and Ofsted regulation. This will no longer be properly described as an unregulated sector; it will be regulated. We will also legislate to give Ofsted additional powers in relation to illegal, unregistered children's homes.

As highlighted by noble Lords, the former Children's Commissioner also called for the strengthening of the role of independent reviewing officers and for the Government to better define what care looks like for older children, both of which we consulted on last year. We believe that the banning of placements for under-16s and the system which I have outlined will be an appropriate way to regulate this sector. We do not believe that an extended role for the IROs would be necessary to achieve this.

Local authorities must continue to make care placement decisions that meet the needs of children, putting in place the care and support that they need. The new national standards for this sector will make clear what we expect of these settings, and standards are obviously already in place for children's homes.

Noble Lords mentioned the independent care review. There is a call for evidence at the moment in relation to that, which we hope this sector and others will respond to.

Finally, nothing we have done changes the individual decisions local authorities should be taking in the best interests of children. The noble Baroness, Lady Tyler, outlined the needs and wishes of these children, and at an older age, their stated needs and wishes are obviously a key factor in the decision. However, there is no default or automatic position for these children; it is clear to local authorities that they must make individual decisions. A placement in this type of environment

and accommodation in certain cases is not a second best but is made in their best interests, and it is often their stated wish.

I hope I have reassured noble Lords that we will introduce the necessary reforms to this sector without delay, and I thank all noble Lords who have contributed to this debate.

7.40 pm

Lord Watson of Invergowrie (Lab): My Lords, I thank the noble Lord, Lord Russell of Liverpool, the noble Baroness, Lady Tyler, and the Minister for their contributions to this debate, which has been one of quality, if not quantity. I think that is due to the relatively short notice given. Others would have wanted to participate, and I hope they read the report of the debate with interest.

The noble Lord, Lord Russell of Liverpool, made an important point about data not being readily available. He mentioned the research carried out by the Office of the Children's Commissioner to find information that was not to hand. However, many children's charities are also assiduous in collecting information that, I think it reasonable to say, we might have expected the Department for Education to have collected and made available.

I would like to echo the comments of the noble Baroness, Lady Tyler, in paying tribute to those organisations that have prepared briefings for this debate, namely Article 39, Home for Good, Just for Kids Law and the Children's Rights Alliance for England. Given that none of us, apart from Ministers, has personal support staff, the contribution of those and many other organisations in this and other debates in enabling the Government to be more effectively held to account should not be underestimated.

The noble Lord, Lord Russell, also mentioned the previous Children's Commissioner's recommendations and touched on one I was unable to mention because of the time limit. I am referring to the role of the independent reviewing officers, who oversee and scrutinise the care plans of children in care. The recommendation by the commissioner that independent reviewing officers should visit placements before children are placed there to assess their suitability is important, and I hope it will be adopted by the department.

Like the noble Baroness, Lady Tyler, I have been encouraged by the remarks of the new Children's Commissioner, Dame Rachel de Souza, since she took up her post a few weeks ago, not least in relation to the children remaining in care until the age of 18. I have to say, in passing, that her predecessor set a high standard; I am hopeful that she will do the same, and I wish her well.

It was humbling to hear the Minister recount her personal experience of living independently at the age of 16. I cannot imagine what that must have been like. Clearly, it has not held her back. I would like to think that every other young person in that situation would emerge with such distinction. However, that is rarely the case, although, for many young people, remaining in care between the ages of 16 and 18 is often the crucial difference in enhancing their life chances.

The Minister's response to the questions that I and others put to her were encouraging in some respects, but the regulations are another example of the Government managing a crisis and not finding a solution to it. I would like to think that we will look at a long-term plan whereby the children's care sector is not just better resourced but better organised. I am hopeful the review that is under way will point in that direction, because these young people deserve better, and we can do better on their behalf.

Motion agreed.

Independent Review of Administrative Law Update

Statement

The following Statement was made in the House of Commons on Thursday 18 March.

"With permission, I would like to make a Statement on the Government's response to the independent review of administrative law.

In our democracy, judicial review plays a vital role in upholding the rule of law: it acts as one of the checks on the power of the Executive. Importantly, as the noble and learned Baroness, Lady Hale, put it in her submission to the review panel:

'In the vast majority of cases, Judicial Review is the servant of Parliament'.

Through judicial review, the courts ensure that the powers that Parliament grants are not used in ways that exceed the limits imposed on those powers, and are not used in ways that are contrary to Parliament's intentions. The purpose of judicial review is not to question the merits of any decisions made under those powers; rather, it is to ensure that the decision was made lawfully. The jurisdiction of the courts is therefore meant to be supervisory only.

Last year, I launched an independent review of administrative law to examine trends in judicial review. I am sure the House will want to join me in thanking the panel, chaired by the noble Lord, Lord Faulks, for its diligence in producing such an excellent report, copies of which I have placed in the Libraries of both Houses. It was quite an undertaking, conducted in this time of Covid. The panel ran a call for evidence, which elicited many valuable contributions from a diverse range of interested parties.

The report's finding—that there is a growing willingness to accept an expansion of the remit of judicial review, whether in terms of more decisions being considered justiciable, or the way in which the courts review an exercise of power and the remedies given—is worrying. I am sure that the House will agree with me that the recommendations in the panel's report about how we can restore a more sensible balance of responsibilities between Parliament and the courts are clear, practical and achievable.

The Government are consulting on a range of policy proposals, but there are two recommendations in particular from the report that we are keen to take forward as soon as possible. First, we will follow the review's recommendation to legislate to remove a type of judicial review known as the Cart judicial review, after the Supreme Court case of that name.

The issue is that, even though decisions of the Upper Tribunal are supposed to be of the same status as those of the High Court, the Cart judicial review route allows someone to challenge certain Upper Tribunal decisions by applying to the High Court for permission for judicial review of the Upper Tribunal's decision, and potentially onward to the Court of Appeal should the High Court refuse permission, as in fact it does in the vast majority of cases.

In such an appeal, the Court of Appeal is essentially asked whether it thinks that the proposed appeal against the High Court's refusal to grant permission to judicially review the Upper Tribunal's refusal to grant permission to appeal the First-tier Tribunal's decision should be allowed. That—eloquently, perhaps—outlines the essence of the problem: we say that there are simply too many layers and too many otiose proceedings that do not serve the interests of justice.

The review analysis found that out of 5,502 Cart judicial reviews brought between 2012 and 2019, only 0.22% were successful. That is an astonishingly low rate. Given that each and every one of those cases required detailed consideration by judges, I agree with the panel that a huge amount of judicial resource is being used to rectify a vanishingly small number of errors. The proposed reform will place the decisions of the Upper Tribunal and the High Court on an equal footing, and we will bolster the current array of remedies available to the courts so that issues can be resolved in a collaborative way.

I agree with the panel that the courts should have the ability to suspend quashing orders and to mandate a time by which any administrative oversight should be corrected. I will accept that recommendation and would like to consider how it should be implemented and whether suspended quashing orders should be presumed to apply or mandatory.

The steps recommended by the panel are an excellent starting point for rebalancing our system, but the Government would like to go further to protect the judiciary from unwanted political entanglements and restore trust in the judicial review process. As the House will see, the report contains a detailed analysis of judicial review and how it operates in practice, and we are at the right juncture to take a closer look. Today, I want to open up a public debate on the role of judicial review within our wider constitutional arrangements by launching a consultation on further proposals to examine the use of ouster clauses, the remedies available in judicial review proceedings, and further procedural reform.

It is self-evidently open to Parliament to delineate the role of the courts in controlling any particular power because, of course, Parliament is sovereign. Parliament can do this by passing an ouster clause—a considered choice that certain subjects are not appropriate for judicial control. For example, in the Parliamentary Constituencies Act 1986, Parliament provided that reports of the Boundary Commission are not subject to judicial review. Unfortunately, the current practice on ouster clauses—not giving them effect—arguably goes against the intention of Parliament, so we are considering putting in place a set of rules that clearly delineate which issues are a matter for the courts to adjudicate through judicial review and which are not. For that reason, the Government want to consider the workings of ouster clauses and find a way for them to be used more effectively and in the way intended by Parliament.

The consultation proposes the introduction of prospective-only remedies, which would limit the retrospective effect of any quashed decision or action. That would complement the use of suspended quashing orders and could result in more considered resolutions. Instead of the sledge-hammer of remedies that demand immediate resolution and lead to rushed policy, I want to create a system that encourages solutions to be found through political will rather than legal dispute, so that policy-making as an exercise can be much more collaborative and better informed.

The consultation will therefore consider three things: first, whether to give judges discretion in providing for prospective-only remedies; secondly, whether prospective-only remedies should be presumed to apply in all challenges against statutory instruments; and finally, whether all remedies granted when challenging statutory instruments must be prospective-only unless it is a matter of exceptional public interest for them not to be.

As part of this work, to make such remedies effective I am bringing forward proposals for reforms to the doctrine on nullity. The consultation will also consider whether to recommend to the civil procedure rule committee that it considers a range of procedural reforms to improve the efficiency of the administration of judicial review claims.

As Lord Chancellor, my role is to uphold the rule of law and defend the judiciary. The Government want to seize the opportunity to do just that by restoring a proper balance between the institutions that have been so integral to our success as a nation in protecting the rights of individuals and our vital national security, and effective government itself. We are determined to ensure that judicial review—this vital check on executive power—is maintained for future generations and that the process is finely tuned within our constitutional arrangements, to enable it to be a true conduit for fairness in our society. I commend this Statement to the House."

7.45 pm

Lord Falconer of Thoroton (Lab) [V]: My Lords, I thank the noble Lord, Lord Wolfson of Tredegar, for making the Statement available to us today. I also thank the noble Lord, Lord Faulks, and his team for the work they have done considering judicial review. We may disagree with many of the things the noble Lord, Lord Faulks, says, but there is no doubt that he has made a very important contribution to the debate. He is a substantial figure in the law and in this House, and we greatly appreciate the work that he and his team have done.

I ask the noble Lord, Lord Wolfson of Tredegar, to explain why, extraordinarily, the Government have not published the responses to the call for evidence made by the committee of the noble Lord, Lord Faulks. In particular, why have the Government not published what the department said about judicial review? That

is a very important aspect of the debate on this matter, and I would very much welcome seeing what it said, not just extracts.

Judicial review ensures that the Executive act in accordance with the law. The law mainly means Acts of Parliament. That is why the noble and learned Baroness, Lady Hale, said JR is mostly "the servant of Parliament". This Government have proved themselves disdainful of the law, as we saw during the passage of the internal market Act and in the Attorney-General's abandonment of the rigid constitutional convention of independence. The most sinister aspect of the Statement the Lord Chancellor made in the other place is the Government's intention to consult on increasing the circumstances in which judicial review will not apply and ousters will work more often. Judicial review requires the Government to act in accordance with Acts of Parliament and their powers, and not in an arbitrary, capricious or wholly unreasonable way. What problem do the Government have with that principle? Could the noble Lord, Lord Wolfson of Tredegar, reaffirm the Government's commitment to those principles?

Secondly, what is the problem with the current rules of ouster? In what areas do the Government wish the ouster to apply more readily? For example, do they wish it to apply more readily in setting aside the 0.7% target? Do they want it to apply more readily to the many cases of domestic violence and violence against women in which judicial reviews have been taken?

Finally, to what extent do the Government intend to pass an Act of Parliament to give effect to the proposal they make in the consultation?

Lord Marks of Henley-on-Thames (LD) [V]: My Lords, I also thank the noble Lord, Lord Faulks, and the distinguished panel he chaired, for the hard work and painstaking research they put into producing their independent review. I share the right honourable and learned Lord Chancellor's expressed view that

"judicial review plays a vital role in upholding the rule of law: it acts as one of the checks on the power of the Executive".—[*Official Report*, Commons, 18/3/21; col. 504.]

As his right honourable friend Michael Gove put it when he was Lord Chancellor:

"Without the rule of law power can be abused. Judicial review is an essential foundation of the rule of law, ensuring that what may be unlawful administration can be challenged, potentially found wanting and where necessary be remedied by the courts."

The first of the two steps the Government plan to take now is the ending of the so-called Cart JRs, through which the High Court permits a judicial review although the Upper Tribunal has refused permission to appeal. They say that so few Cart JRs succeed that they are a waste of judicial resources. From the consultation questions, it is clear that this decision has already been taken. Should not the short consultation proposed have been more open on this, given that almost all Cart JRs are immigration cases and so of particular sensitivity?

The Government also propose to permit courts to suspend quashing orders to allow the Government a chance to act to correct the errors that made the original government action unlawful. The reasoning for this change is powerful, and on this issue the consultation seeks views on how to achieve this objective—and rightly so.

However, the rest of this Statement sets loud alarm bells ringing. The Lord Chancellor says that the Government want to

"go further to protect the judiciary from unwanted political entanglements and restore trust in the judicial review process."

He talks of examining

"the use of ouster clauses"—

as mentioned by the noble and learned Lord, Lord Falconer of Thoroton—

"the remedies available in judicial review proceedings, and further procedural reform."

Bluntly, ouster clauses are clauses in statutes designed to ring-fence government decision-making and administrative action from court challenges by making them non-justiciable.

The panel was broadly opposed to the use of ouster clauses. Paragraph 2.98 of its report states:

"While the Panel understands the government's concern about recent court defeats, the Panel considers that disappointment with the outcome of a case (or cases) is rarely sufficient reason to legislate *more generally*."

Paragraph 2.99 states that

"while the use of such a clause to deal with a specific issue *could* be justified, it is likely to face a hostile response from the courts and robust scrutiny by Parliament."

Paragraph 2.100 states:

"The decision to legislate in this area is ultimately a question of political choice. But when deciding whether or not to do so, the Panel considers that Parliament's approach should reflect a strong presumption in favour of leaving questions of justiciability to the judges."

We regard ouster clauses as an unacceptable threat by the Executive to insulate their future unlawful action against challenge. Except in certain well-established areas of prerogative action, they spell danger for the rule of law.

The consultation also proposes the introduction of prospective-only remedies. That would mean that past unlawful government action or SIs would continue to have effect, even if struck down for the future, so victims of past unlawfulness who had not had the means or the ability to challenge it would face gross unfairness. The Lord Chancellor says that this would

"create a system that encourages solutions to be found through political will rather than legal dispute, so that policy making as an exercise can be much more collaborative and better informed".—[*Official Report*, Commons, 18/3/21; col. 505.]

He does not say how or why. Perhaps the Minister can explain that theory to the House.

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Wolfson of Tredegar) (Con): I am grateful to both noble Lords for their questions and comments. I am sure that this is a matter which we will be debating on a number of occasions in this House, so this evening I am going to be relatively brief, not least because the position of the Government is, as we have said, that we would like to consult on a number of matters, and consultation means just that.

Turning first to the comments of the noble and learned Lord, Lord Falconer of Thoroton, I join him in paying tribute to work done by the noble Lord, Lord Faulks, and the other members of this committee.

[Lord Wolfson of Tredegar]
They have done sterling work under the great pressure of a prevailing pandemic, and I am sure the whole House is grateful to them for the work they have done. I was very pleased to hear the praise given by the noble and learned Lord to the committee. Last August, he was tweeting that the Faulks committee was there to "dismantle judicial review." I am pleased to see that, while the noble and learned Lord may tweet in haste, he has read the report and repented at leisure.

As far as publishing the evidence is concerned, we will publish the complete set of non-government submissions received by the panel next week once we have ensured that such publication is GDPR-compliant. That will be followed by a summary of the submissions by government departments to the panel's call for evidence.

On ouster clauses, the noble and learned Lord used the word sinister. There is nothing sinister about them. There are two questions here: first, should one have an ouster clause at all? That is a matter for Parliament. Secondly, if there is an ouster clause, should it be enforced by the court? That is debated in the report and in the Government's response to it. It is of central importance, which goes to the heart of the doctrine of the sovereignty of Parliament. Perhaps I might say, without being flippant, that on this point public law is too important to be left only to public lawyers; that is why we welcome a broad consultation. I am sure that there will be debates on these matters in the future, in this House and in the other place.

As we have set out in our response, the question is essentially whether ouster clauses are being applied by the courts in the manner in which they are drafted and passed by this House and the other place. As to whether an Act of Parliament would be needed, which I think was the noble and learned Lord's last question, it may well be, depending on which issues are proceeded with. For example, if we proceed with the proposal for a suspended quashing order, that might well have to be done by primary legislation. The Supreme Court in the case of Ahmed concluded that the common law position was that a suspended quashing order was not available.

I now turn to the questions from the noble Lord, Lord Marks of Henley-on-Thames. First, on Cart, the panel's analysis is, as he says, very thorough on this point. The evidence shows that only a very small percentage of this type of judicial review is ever successful. We do not feel the need to redo the consultation exercise carried out by the panels in that regard; we are focusing our consultation on how best to give effect to the recommendation in the panel's report.

On suspended quashing orders, I note and broadly welcome the noble Lord's support for these as a matter of principle. Obviously, there are questions about how they would be implemented; I look forward to discussing that matter with him in due course. I hear what he says on ouster clauses and I have obviously also read the paragraphs to which he referred. I think where he got to was that the position on ouster clauses would be given robust scrutiny by Parliament. I welcome robust scrutiny by the noble Lord and, indeed, by other noble Lords, but the panel said that there are circumstances in which it may be appropriate for Parliament to oust or limit the jurisdiction of the courts if there is sufficient justification for doing so. Given that, we think that it is right to consult on that question.

The noble Lord makes the point that, if one is to have a prospective remedy, it is important in the interests of justice to ensure that people who may have been unfairly affected by the decision are considered. We are clear that there must be a means by which a court can make an order with retrospective effect if the circumstances require it. However, with respect to a court making a suspended quashing order, we would like to consult on whether that should be an available option and, if it is, the circumstances and safeguards that that option would bring with it.

I hope that I have responded to all the points raised by both speakers. I will check the *Official Report* to ensure that I have done so.

The Deputy Speaker (Baroness Barker) (LD): We now come to the 20 minutes allocated for Back-Bench questions. I ask that questions and answers be brief so that I can call the maximum number of speakers.

7.59 pm

Lord Hope of Craighead (CB) [V]: My Lords, of course Parliament has the power to legislate to limit or exclude judicial review. The question is how far it should go. I was a member of the panel of the Supreme Court in the Cart case. We set the bar as high as we could when we were defining the test that should be applied, but experience has shown that our decision has not worked so I agree that it is time to end that type of review.

As for suspending quashing orders, in HM Treasury v Ahmed in 2010 I found myself, to my dismay, in a minority of one against six in holding that our order setting aside an Order in Council freezing a terrorist's assets before they were dissipated should be suspended to give it time for it to be corrected. I agree too with the proposal to consult on prospective-only remedies as I gave a judgment some years ago in favour of those.

So far, so good, but I hope that the indication that the Government are proposing to go further is not meant to be a suggestion that a more wholesale reform is proposed. That would be a cause for concern. Can the Minister reassure me on that point?

Lord Wolfson of Tredegar (Con): My Lords, I am grateful for the noble and learned Lord's comments. On prospective remedies, I mentioned the decision in Ahmed in my opening remarks. I hope I am not rubbing salt into the noble and learned Lord's wounds when I mention that decision, and I am grateful for his comments on it.

On his last point, I shall put it this way: this Government are committed to the rule of law. Judicial review is an essential part of the rule of law—see paragraph 18 of the Government's response. I hope that gives the noble and learned Lord the reassurance that he was looking for.

Lord Howard of Lympne (Con) [V]: My Lords, I echo the tributes that have been paid to the noble Lord, Lord Faulks. I congratulate him and the panel on their report and I welcome the Government's response.

Unlike some noble Lords who have spoken, I particularly welcome the Government's decision to launch a consultation on proposals to examine the use of ouster clauses. As the Lord Chancellor says, the current position on ouster clauses, which is not to give them effect, goes against the intention of Parliament. In many ways, the mother of all ouster clauses is to be found in Article 9 of the Bill of Rights, which provides that

"proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament",

a provision to which scant regard was paid by the Supreme Court in the Prorogation case.

Can my noble friend the Minister give us any idea of the timescale of the consultation exercise to which he has referred? When may we expect to see—and, I hope, enjoy—its fruits?

Lord Wolfson of Tredegar (Con): My Lords, I am grateful for my noble friend's comments on the report. I think the consultation period is six weeks. As soon as we have the responses in, we will work at pace to bring back the Government's response to that consultation.

On ouster clauses and the decision in Miller II, perhaps I should merely stick to what I have said so far. I do not really want to get dragged into an analysis of Miller II this evening.

Lord Browne of Ladyton (Lab) [V]: My Lords, does the Minister agree with the former head of the Government Legal Service, Sir Jonathan Jones, as quoted in the *Law Society Gazette,* that:

"The review doesn't bear out the suggestion that there has been significant judicial overreach or a surge of cases in recent years, or that large numbers of unmeritorious cases are being allowed to proceed"?

If so, why does the Statement imply the opposite? Further, does he agree with Sir Jonathan that:

"The proposal that remedies might be available only prospectively will, at least, have to allow for exceptions"

if only to

"avoid the risk of serious injustice to claimants who have already suffered loss or damage"?

Lord Wolfson of Tredegar (Con): My Lords, on the first point, I respectfully disagree with the comments of Sir Jonathan, whom I respect very much. In conclusion 7, particularly the first two sentences of that paragraph, it seems to me that the panel is clear that there are cases where the courts have gone beyond a supervisory approach.

On the question of potential injustice for those who have suffered, if one is going to have a suspended quashing order or a prospective remedy, as I have made clear, that is something that we are interested in consulting on. Indeed, I would welcome the noble Lord's involvement in that consultation.

Lord Thomas of Gresford (LD) [V]: My Lords, the Statement says that

"the Government would like to go further to protect the judiciary from unwanted political entanglements and restore trust in the judicial review process."

First, is the political entanglement referred to the Prorogation of Parliament, and is referring an unlawful abuse of the royal prerogative to the court unwarranted? Secondly, who has lost trust in the judicial review process? Is it unsuccessful applicants whose applications have been refused, or is it the Government whose actions have been found so often to be unlawful? Thirdly, what does a presumptive decision mean? If it is that an appellant who is successful has no remedy or that the decision applies only to future decisions and not to him, why would anybody bother with a JR at all? So the Government want to go further; the review obviously has not gone far enough for them—oh, what a shame.

Lord Wolfson of Tredegar (Con): My Lords, on the first point, the words used by the Lord Chancellor are straightforward; I do not think they need any glossing from me. On the second point and as to trust in the judicial review process, it is important that the process does two things. It enables Governments to govern; equally, it enables them to govern well. Judicial review is important for Governments because it makes sure that they govern well, and within the law. That is why we are particularly focused not only on the recommendations of the panel; we want to go to consultation on other matters as well.

On the last point, as to prospective remedies, with great respect, the noble Lord is simplifying what is a more complex matter. It is far from the case that a prospective remedy gives no remedy to the particular litigant in that case. It all depends on how the prospective remedy is furnished and how people affected by the decision can be compensated or otherwise dealt with during the intervening period. That is precisely why we want to go out to consultation: because the current cliff edge of either no remedy or a remedy ab initio, and a quashing from the moment of the decision, leads to unfortunate consequences. That is as the panel has said, as the Government have responded, and indeed, as the noble and learned Lord, Lord Hope of Craighead, explained in his minority judgment in Ahmed.

Lord Woolf (CB) [V]: My Lords, like others, I congratulate the Faulks committee on the work it has done and the circumstances in which it did it. I also indicate that there is at least merit in considering further the two matters which the Government propose to act upon. However, I ask the Government to bear in mind that judicial review has, so far, been very much a process which has evolved. It is most important that it is underpinned by discretion in the judges to see how it is applied. I feel that there will be room for improvements to be made. I welcome in particular the proposal that that should be done in certain instances with the assistance of the Civil Procedure Rule Committee, which has great experience in these matters. There is a lot to be careful about in what was contained in the announcement of the response by the Lord Chancellor. But all these matters can be carefully considered and I propose at this stage to say no more.

Lord Wolfson of Tredegar (Con): My Lords, I am grateful for the comments of the noble and learned Lord, particularly for his support on the two matters

[Lord Wolfson of Tredegar]
he first mentioned. Respectfully, he is certainly right that a number of the suggested procedural reforms would have to go through the Civil Procedure Rule Committee. He made the point that judicial review has evolved over time, and so it has. But, in that context, he may like to see that in the Lord Chancellor's introduction to the Government's response, he makes the point in paragraph 6 that an iterative approach to reform is most appropriate. That perhaps chimes with the point which the noble and learned Lord was making about judicial review being a process, and an iterative process at that. Reform will also be iterative.

Lord Mackay of Clashfern (Con) [V]: My Lords, I join those who have paid compliment to the panel: its work was very well done. Have the Government considered whether, when a court finds a decision wrong, it should be able to decide itself, or should it have to remit to the nominated decision-maker?

Lord Wolfson of Tredegar (Con): My Lords, that is a very interesting proposal from my noble and learned friend. Generally, of course, judicial review does not substitute the decision of the court for the decision of the decision-maker, but perhaps that is a matter which I can reflect on and discuss with my noble and learned friend as I consider the responses to the consultation generally.

Baroness Ludford (LD) [V]: My Lords, the Government appointed a distinguished panel to review the operation of judicial review led by a Conservative former Justice Minister. The panel said that

"disappointment with the outcome of a case … is rarely sufficient reason to legislate more generally".

It was obviously thinking of Miller 2, the prorogation case. The Government seem dissatisfied with that response. and are now consulting on statutory changes, such as for ouster clauses, which the panel advised against. The Faulks review also points out that

"any legislation would be of limited effect unless changes are also … made to the Human Rights Act."

Given their reaction to the review of judicial review, will the Government similarly ignore the result of the Gross review of the Human Rights Act if they do not get the answers they want?

Lord Wolfson of Tredegar (Con): My Lords, we are not disappointed with the report from the noble Lord, Lord Faulks, and his team. On the contrary, it is a very good piece of work. We are consulting for the reasons I have already expressed. The panel did not say that ouster clauses should never be used; it said that, when used appropriately, they should not be seen as an affront to the rule of law. We want to consult on whether and how they should be used. The independent review of the Human Rights Act is ongoing. We will consider its results in due course. While very significant reform of judicial review might require changes to the Human Rights Act, the changes we are proposing do not.

Lord Pannick (CB) [V]: My Lords, I declare my interest as a practising barrister in public law cases. I too thank the noble Lord, Lord Faulks, and his review team for the very sensible and balanced report which it has produced. The Minister will have noted the wise words of the noble Lord and his colleagues at paragraph 15 of their conclusions:

"Our view is that the government and Parliament can be confident that the courts will respect institutional boundaries in exercising their inherent powers to review the legality of government action. Politicians should, in turn, afford the judiciary the respect which it is undoubtedly due when it exercises these powers."

Do the Government agree?

Lord Wolfson of Tredegar (Con): My Lords, I certainly agree that the courts would be expected to respect institutional boundaries, and Parliament and the Government should do likewise. The purpose of our consultation is to make sure that we produce the best system we possibly can so that all those involved in the judicial review process—judges, applicants, Government and everyone else—is party to a system which promotes good government and upholds the rule of law.

Lord Beith (LD) [V]: My Lords, we know what the Government's latest ideas on the form of ouster clauses is, because there is one in the draft Bill to repeal the Fixed-term Parliaments Act. Clause 3 states that

"A court of law may not question … the exercise or purported exercise of the powers referred to in section 2 … any decision or purported decision relating to those powers, or … the limits or extent of those powers."

Is that really the model that the Government are considering for other areas of law, and is it not simply putting the Minister in the position of saying, "I decide what my powers are and nobody can challenge that"?

Lord Wolfson of Tredegar (Con): My Lords, a Minister does not decide what his or her powers are. If there is an ouster clause in an Act of Parliament, it is an ouster clause in an Act that has been passed by Parliament. When one is talking about the Fixed-term Parliaments Act, there may be special considerations because of the issue of Section 9 of the Bill of Rights. Generally, however, what we want to consult on in terms of ouster clauses are the two points that I have identified: first, whether ouster clauses ought to be used; and, secondly, if they are used, how to make sure that Parliament's intention is given effect to, which we do not think is always the case with ouster clauses at the moment.

Lord Judge (CB) [V]: My Lords, the consultation process with which we are about to engage is taking place at just the time when the further expansion of executive power has been brought into sharp relief by the measures to prevent and defeat the coronavirus pandemic—measures, let it be noted, created and extended by statute. I therefore respectfully wonder whether it is consistent with the Minister's accurate observation that judicial review is a

"vital check on Executive power"—[*Official Report*, Commons, 18/3/21; col. 506.]

even to begin to consider contracting the ambit of judicial review, a diminution in the ability of the citizen to question the exercise of executive power, and limiting the remedies available to those damaged by its misuse.

Lord Wolfson of Tredegar (Con): My Lords, with respect to the noble and learned Lord, we are not seeking to limit the remedies at all. On the contrary: one of the things we are consulting on is whether we should expand the remedies available to the court so that it has more tools in its toolbox that it can use in appropriate cases.

Of course, I understand the noble and learned Lord's point about the Coronavirus Act. It is important to recognise that, in those contexts, the level of scrutiny that was able to be afforded by Parliament was perhaps different from what it would normally be but, in consulting on these matters, it is no part of this Government's intention to limit the scope of judicial review. We are trying to make sure that judicial review is appropriately focused for the particular purposes for which it is used. We are consulting on expanding the remedies available, not contracting them.

Lord Lansley (Con): My Lords, I approach this from the standpoint of a parliamentarian, not a lawyer. I observed with some surprise that Parliament did not feature in the review's terms of reference, so I welcomed the central role for Parliament in the panel's recommended approach to the questions asked of it. Does my noble friend therefore subscribe to the view expressed by the noble and learned Baroness, Lady Hale, in her submission to the review:

"If Parliament does not like what a court has decided, it can change the law"?

To be preferred even more is that Parliament should be crystal clear in both its terms and purposes about what it wishes the law to be, thereby restricting the scope for judicial review to the conventional purposes of failures of process or abuse. Does my noble friend also share the reservation expressed by the panel about the excessive use of framework legislation, which leaves too much to statutory instruments to set out? The result of that is that the Executive and the judiciary engage in trying to determine what Parliament intended. Will the Government avoid seeking to make the regulations proof against judicial review, and instead put more effort into securing clarity and certainty in primary legislation?

Lord Wolfson of Tredegar (Con): My Lords, I agree entirely with my noble friend that Parliament is sovereign. Its role is central and sovereign when we are considering questions around judicial review—I hope that the Government's response to the panel's recommendations reflects that. The noble and learned Baroness, Lady Hale, is of course correct that Parliament can act to reverse any judgment, but I also agree with the panel that it should do that only with great care.

I also agree with my noble friend that Parliament should legislate in terms which are as clear as possible. The corollary of that is that the courts ought to respect Parliament's obvious intent. I repeat the points I made earlier about ouster clauses in that context.

As for legislation, the factors in play when drafting legislation are many. It is not always easy to decide whether something should be in primary or in secondary legislation, but I certainly agree with my noble friend that clear and unambiguous wording, particularly with regard to the extent of delegated powers, is something to be aimed at.

House adjourned at 8.20 pm.